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New Mexico
Regulation and Licensing Department
Securities Division

Report on the

THE NEW MEXICO FINANCE AUTHORITY

Investigative Facts, Findings, and Conclusions

December 3, 2012

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Introduction

The following represents a summary of the Securities Division's investigation into the events surrounding the creation and issuance of a forged audit report by the New Mexico Finance Authority. Under the authority granted by §58-13C-602(A)(3) NMSA 1978, the Director of the Securities Division may, "publish a record concerning an action, proceeding or an investigation pursuant to or a violation of the New Mexico Uniform Securities Act… if the director determines it is necessary or appropriate in the public interest and for the protection of investors." The Director has determined that it is in the public interest and serves to protect investors to publish such a record in this case.

This report is by no means a comprehensive account of all information or evidence obtained in the course of the investigation. Witness interviews have been abridged and the content reported here is not a full representation of their statements. Much of the highly technical financial, legal, accounting and factual analysis has been condensed in the interest of creating a readable report that is useful to a broad public audience. The Securities Division is reporting the facts, analysis and conclusions contained herein to inform all of the New Mexico Finance Authority's stakeholders of key investigative findings.

Summary

On July 13, 2012, the State of New Mexico Securities Division (the Division) became aware of media reports that claimed that the New Mexico Finance Authority (NMFA), a public benefit corporation that engages in the offer and sale of securities (namely municipal bonds), had issued a fraudulent audit report. The Division immediately opened an investigation into the allegations surrounding the creation and filing of the fraudulent audit. As part of the investigation, agents of the Division (agents) conducted numerous recorded interviews of current and former NMFA employees, NMFA Board Members, employees of the audit firm engaged to perform the fiscal year 2011 audit, and others. The Division also applied for and served numerous Grand Jury Subpoenas to banks, rating agencies, accounting firms, and securities self-regulatory organizations.

Following a preliminary investigation of facts and circumstances surrounding the fraudulent audit, the Division applied for and executed a search warrant at the offices of the NMFA for the purposes of collecting evidence of criminal activity.

Over the course of a several month investigation, agents conducted dozens of interviews and examined thousands of pages of documents, emails, and electronic evidence relevant to this case. Based on evidence uncovered during this investigation, a District Court Judge issued warrants for the arrest of the NMFA's former Controller, Gregory Campbell, as well as for the organization's then current Chief Operating Officer (COO), John Duff. The warrants cited probable cause that the two had engaged in the following criminal acts.

Gregory Campbell:

- 1 count of Forgery, (Make Or Alter)
- 3 counts of Forgery, (Issue Or Transfer)
- 8 counts of Fraudulent Sale Or Offer To Sell A Security (Securities Fraud)

- 1 count of Racketeering
- 1 count of Conspiracy To Commit Racketeering

John Duff:

- 8 counts of Accessory to Fraudulent Sale Or Offer To Sell A Security (Securities Fraud)
- 1 count of Racketeering
- 1 count of Conspiracy To Commit Racketeering

Campbell and Duff were arrested on August 8, 2012.

A Grand Jury convened in Santa Fe on September 20, 2012 to hear the case. The Grand Jury indicted Campbell on all counts except racketeering and conspiracy to commit racketeering. The Grand Jury did not indict Duff on any counts.

Gregory Campbell pleaded guilty to 1 count of Forgery, (Make or Alter), 1 count of Forgery, (Issue or Transfer), and 1 count of Securities Fraud on November 29, 2012 (respectively, counts 1, 4 and 5 of the indictment). As part of the plea agreement, Campbell is required to cooperate fully with the Securities Division and any other law enforcement or regulatory agency investigating the facts and circumstances surrounding the forged audit and associated fraudulent activity. The Securities Division agreed to limit any potential sentence imposed to six years in prison, leaving the ultimate sentencing decision up to the presiding District Court judge. Campbell was sentenced to five years of supervised probation with a conditional discharge.

Organizational Background

Information regarding the organizational background of the NMFA was obtained through review of the 1992 New Mexico Finance Authority Act; other publicly accessible information and documents; and interviews with NMFA staff and Board members.

Constitution, Character, and Powers of the NMFA Board

The NMFA is a public benefit corporation created in 1992, by legislative act[1], for the purpose of coordinating and facilitating the planning and financing of state and local capital projects in New Mexico. The NMFA partners with local government entities, state agencies, legislators, repeat borrowers and financial advisors to carry out their mission while sustaining the capacity of the various loan programs it administers.

The NMFA is not a state agency and under the terms of the NMFA Act, is not generally "subject to the supervision or control of any other board, bureau, department or agency"; however, the NMFA's activities are delineated by State statute and its ability to make loans to governmental entities for specific projects is subject to legislative approval.

The organization and its board of directors are one and the same. In accordance with the NMFA Act, the organization is

[1] Chapter 6, Article 21 NMSA 1978.

> "composed of eleven members. The secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor."

These members are commonly referred to as the NMFA Board (Board). Board members are not compensated and are appointed to four-year terms. In the event of a vacancy, the act provides the governor with the authority to appoint a replacement for the remainder of the unexpired term. The governor additionally designates a member to serve as Chair while the Board annually elects one of its members to serve as Vice Chair.

Other than requiring the Governor to appoint a Chief Financial Officer from one of the state's higher educational institutions to the Board, Section 4 of the NMFA Act fails to specifically address any minimum financial experience or qualifications for Board members. In addition, the NMFA Act is silent regarding the qualifications required to serve as a corporate officer.

To facilitate its management responsibilities, the Board formed several standing committees, each of which comprised several members of the Board, and charged each committee with specific tasks. One of these was the Audit Committee, on which three Board members served. The Audit Committee formally designated both a Committee Chair and Committee Vice Chair; the Committee Chair generally presented the activities of the committee at meetings of the general board. The Audit Committee was charged with overseeing, on behalf of the larger Board, the annual external audit process as well as directing internal audits aimed at improving NMFA accounting practices and safeguards.

Audit committees are typically required to communicate with external auditors regarding the timing and scope of an audit. They are also typically required to report any issues with the audit. Such communication and oversight are purposefully designed as internal controls that prevent management from manipulating the audit or financial statements. Agents were unable to locate a written policy that spelled out the specific responsibilities and standard operating procedures of the NMFA Audit Committee; however, interviews with members of the NMFA Board and staff as well as the Committee's own past practice indicate that the NMFA's Audit Committee was expected to serve a similar function within the organization.

NMFA Organizational Structure and Senior Management Responsibilities

The Board has authority under the NMFA Act to

> "appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including chief executive officer...."

The NMFA Act specifically empowers and requires the CEO to manage the day-to-day business of the NMFA but subjects the CEO's authority to the "policies, control and direction" of the Board. In addition, the organizational design of the NMFA has incorporated several other senior management positions, including a Chief Operating Officer (COO), who is responsible for managing all of the NMFA's operational divisions, and the Chief Financial Officer (CFO), who supervises both the NMFA's Controller and Investment Manager. Under the NMFA's organizational structure, the CEO directly supervises the COO, the COO directly supervises the CFO, the CFO supervises the Controller, and the Controller supervises and manages the NMFA's accounting staff. Each of these levels of supervision and management are designed, in part, to provide additional layers of operational oversight.

NMFA Mission and Methods

The NMFA was originally created by legislators for the purpose of providing loans to governmental entities within the state to fund capital projects and purchase equipment. Under authority of the NMFA Act, the NMFA's primary means of raising capital involves the issuance of municipal bonds for sale to investors. The NMFA maintains a Public Project Revolving Fund (PPRF) into which both bond sale proceeds and loan payments are deposited and from which the loans are disbursed.

The ultimate objective of legislators was to create an entity that would evolve into a completely self-sustaining enterprise over time; however, legislators initially provided for some funding through the allocation of a percentage of the Governmental Gross Receipts Tax (GGRT) on government-provided goods and services. GGRT revenue was intended to act as surplus revenue from which to pay bondholders in the event the NMFA did not receive enough in loan repayments to cover any expenditures. The NMFA has added both a Contingent Liquidity Account and a Common Debt Service Reserve Fund to strengthen the PPRF in anticipation of future reductions in revenue from the State. The GGRT, however, remains the NMFA's largest outside source of revenue. Likewise, though legislators have since committed the NMFA to additional programs and responsibilities for which they have made specific appropriations, the PPRF continues to be the NMFA's primary and largest fund.

Between 1994, when the PPRF was established, through December 31, 2011, the NMFA made 1,003 PPRF loans totaling $2.1 billion. Approximately 43 percent of these loans, totaling more than $1.08 billion, were made between 2007 to 2011. During the same period, the NMFA issued 37 Bonds totaling nearly $1.4 billion. As of June 30, 2012, approximately $819.5 million of this bond debt was outstanding.

Educational and Experiential Background of Key Personnel

The following background information was obtained through a review of personnel files and interviews with the employees of the NMFA.

Gregory Campbell

Campbell holds a Bachelor's Degree in Accounting from Uppsala College. Campbell worked as a staff auditor for two years and held accounting positions at various private and governmental agencies prior to accepting a temporary position at the NMFA in 2005. After six months working as a temporary member of the NMFA's accounting staff, he was brought on as a permanent employee in 2006. At the end of 2007, Campbell was promoted to Controller. Campbell had been involved in the audit process at the NMFA from 2008 through his voluntary resignation in June 2012.

John Duff

Duff holds a Bachelor's Degree in Economics and a Master's Degree in Accounting. Prior to his employment with the NMFA, he held several high profile financial positions including Managing Partner for Touche and Ross, Vice President and Financial Advisor for Southwest Securities, and Assistant Vice President for Wachovia Securities. He worked in public practice as a licensed CPA for 17 years; however, he did not hold a CPA license during his tenure at the NMFA. Duff was hired as Chief Investment Officer of the NMFA in 2006. At the end of 2007, he became the Chief Financial Officer (CFO)—a position he held until March of 2011, when he was appointed interim Chief Executive Officer (CEO). Upon the appointment of a permanent CEO in September 2011, Duff was appointed Chief Operating Officer (COO). He served as COO until being placed on administrative leave in August 2012. Duff served as Campbell's direct supervisor from 2007 and was intimately involved in the audit process for fiscal years 2008, 2009 and 2010.

Richard May

May holds a Master's Degree in Political Science. May had previously served as the majority staff director in the U.S. House of Representatives Budget Committee and as a manager responsible for government relations at Sandia National Labs. May was appointed Cabinet Secretary for the Department of Finance and Administration (DFA) and served for approximately eight months prior to his appointment as the NMFA's CEO. In accordance with the NMFA Act, as DFA Cabinet Secretary, May was also appointed to the Board. During the final four months of his tenure as a Board member, May served as Vice-Chair of the Audit Committee.

<u>Background of Board Members</u>

The following background information was obtained through a review of publicly accessible information and interviews with Board members.

During the 2011 audit, William Fulginiti, Paul Gutierrez, and Lonnie Marquez, all statutorily appointed, had been serving on the Board for more than four years. Fulginiti was appointed to the Board when the NMFA was first established in 1992. All three had served on the Audit Committee during previous years' audits and Marquez was serving as the Chair of the Audit Committee during the 2011 audit process. In addition, four other members of the Board were Cabinet Secretaries or their designees who were familiar with the state audit process generally. All Board members were aware that state law required the completion of an annual audit.

Status of the NMFA

Information regarding the financial background of the NMFA was obtained through review of financial statements for the fiscal years ending June 30, 2009 and 2010, interviews with employees of the NMFA, interviews with members of the NMFA Board, and interviews with employees of the firm CliftonLarsonAllen.[2]

The NMFA was established by, and derives its authority from State law and is therefore subject to governmental accounting standards. Governmental accounting standards use an accounting method called "fund accounting." A fund is a set of accounts that are segregated based on a specific purpose, law or rule and any funds not specifically segregated are accumulated in their own fund—typically referred to as the "general fund." All of the fund information is then consolidated to present the financial condition of the *primary government*, or governmental entity, as a whole. A primary government is a large government consisting of many funds and component units. In many instances, certain funds of the primary government will present separate financial statements based on regulatory requirements or to provide information specific to that fund.

A component unit of a primary government is a separate legal entity. Though the entity is separate, the primary government retains the ability to control the component unit through a board of appointed government officials or some other mechanism. Component units can be presented in the financial statements in two different ways: *discretely* or *blended*.

Blended component units are so intertwined with the primary government that they are, for all practical purposes, one and the same. Blended component units are included in the primary government's financial statements as funds. Discretely presented component units, on the other hand, though still under the control of the primary government, are not as intertwined as blended component units. Discretely presented component units are presented in one or more separate columns in the financial statements of the primary government.

The NMFA is a discretely presented component unit of the State of New Mexico (primary government) as determined by independent accountants for both the State of New Mexico and the NMFA, as well as by State accounting staff and the NMFA's own staff accountants. As such, financial information for the NMFA is presented in the Comprehensive Annual Financial Report (CAFR) for the State of New Mexico. The NMFA is also required to follow accounting standards issued by the Governmental Accounting Standards Board (GASB) and to use fund accounting.

In the financial statements for the fiscal year ended June 30, 2010 (2010 Financials), the NMFA reported 22 separate funds, which it segregated based on lending and grant programs. The NMFA did not have a general fund. For financial reporting, all of the funds of the entity were combined into one "Statement of Net Assets" (balance sheet); one "Statement of Revenues, Expenses and Change in Net Assets" (income statement); and one "Statement of Cash Flows."

[2] CliftonLarsonAllen served as the NMFA's external auditor during fiscal years 2009, 2010, and 2011 under the name Clifton Gunderson. For the sake of convenience and clarity, this report will hereafter refer to employees and representatives of CliftonLarsonAllen, individually or collectively, as Clifton Gunderson or as the Independent Public Accountant (IPA) as context requires.

The combined schedules showing the individual fund balances are included as supplementary information in the NMFA's financial statements.

Audit Process and Requirements Background

The NMFA is required to follow the State Audit Rule (NMAC 2.2.2) in accordance with the NMFA Act. The Audit Rule requires that the financial books and records of entities be examined and audited by the Office of the State Auditor (OSA) or an Independent Public Accountant (IPA) approved by the OSA. The Audit Rule requires these audits to be performed in accordance with generally accepted auditing standards as well as any rules issued by the OSA. Both the Audit Rule and the American Institute of Certified Public Accountants' generally accepted auditing standards (GAAS)[3] contain highly specific requirements for conducting and completing an audit: specifically, these rules and standards require engagement of an IPA; the undertaking of audit fieldwork; issuance of audit reports; compliance with OMB Circular A-133; and submission of the audit report and financials to the State of New Mexico Comprehensive Annual Financial Report (CAFR).

Engagement of an IPA

The Audit Rule requires the entity under audit to submit an IPA recommendation form to the OSA by a specified due date. The due date varies depending on the type of entity. According to auditing standards,[4] component units are required to submit a recommendation by the same due date as the primary government, which is June 1st. The OSA will notify all agencies of the requirement to submit IPA recommendations. If the agency does not make a recommendation within 60 days of being notified, the OSA may perform the audit or may select an auditor for the agency.

The entity is required to submit an audit contract form along with the IPA recommendation before the deadline. The contract is required to be signed by the head of the agency or designee, a representative of the IPA, and a representative of the OSA.

Auditing standards also require the completion of an engagement letter, which should be completed during the initial phases of the audit.[5]

Finally Auditing standards require the auditor to communicate the scope and timing of the audit to "those charged with governance" during the initial phases of the audit.[6]

In the case of the NMFA, those charged with governance would include the NMFA Board and, more specifically, the Audit Committee, which acts as an extension of the Board. Based on

[3] GAAS includes Statements on Auditing Standards and the AU Section of the AICPA's codification.
[4] NMAC 2.2.2.8 B(6)(vii).
[5] AU Section 311.08 states "the auditor should establish an understanding with the client regarding the services to be performed for each engagement and should document the understanding through a written communication with the client."
[6] AU Section 380.29-33. According to AU Section 380.03(a), "those charged with governance means the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity."

interviews with members of the Board and members of NMFA senior management, this communication was usually conducted, in previous years, in the form of an "entrance conference" at the beginning of audit fieldwork.

Audit Fieldwork

After an IPA has been engaged, the staff of the firm will perform the fieldwork related to the audit. The time required to complete this field work depends upon the audited organization's size and complexity; for an organization like the NMFA, auditors are typically present for one to two weeks, for planning purposes, either prior to the fiscal year end or immediately after year end. Auditors then return for two to three weeks to complete required audit procedures several weeks subsequent to year end. Prior to issuance of the financial statements, additional procedures would be performed offsite by the audit staff. This work would require extensive communications with employees of the entity under audit. During the fieldwork process, employees of the entity under audit would be required to submit substantial documentation to IPA auditors. Examples of documentation include copies of journal entries, copies of invoices, copies of cash receipts, a complete trial balance for the fiscal year end, and/or draft financial statements for the fiscal year end.

Issuance of Audit Reports

After audit fieldwork is completed, the audit undergoes a quality review at the IPA firm. Should the audit successfully clear the quality review, the IPA is ready to issue the Independent Auditor's Report, which is attached to the entity's financial statements. Before issuance of the report, auditing standards require the IPA to receive a representation letter from management of the entity under audit. A representation letter is generated by the management of the entity under audit following completion of the audit fieldwork. The letter provides the IPA with written confirmation that the entity's financial statements are accurate and serves to emphasize that the information contained therein are the *representations* of management. Management and not the IPA, therefore, has ultimate responsibility for the accuracy of the entity's financial statements.[7]

The State Audit Rule additionally requires an exit conference prior to the issuance of an audit report. The exit conference consists of a meeting between representatives of the IPA and senior managers of the entity under audit. The State Audit Rule, moreover, requires the IPA to provide an accurate draft of the audit report prior to the exit conference.[8]

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[7] AU Section 333.09 states "The written representations should be addressed to the auditor. Because the auditor is concerned with events occurring through the date of his or her report that may require adjustment to or disclosure in the financial statements, the representations should be made as of the date of the auditor's report . . . . The letter should be signed by those members of management with overall responsibility for financial and operating matters whom the auditor believes are responsible for and knowledgeable about, directly or through others in the organization, the matters covered by the representations. Such members of management normally include the chief executive officer and chief financial officer or others with equivalent positions in the entity."

[8] State Audit Rule (NMAC 2.2.2.10 (J)(1)) requires that the IPA "hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units . . . if applicable." NMAC 2.2.2.10 (J)(2) states "the IPA shall deliver to the agency a complete and accurate draft of the audit report (stamped "draft"), a list of the 'passed audit adjustments,' and a copy of all the adjusting journal entries before the exit conference."

Upon completion of the exit conference, the final bound copies of the audit reports and financial statements are required to be submitted to the OSA, in accordance with the Audit Rule. The OSA then performs a review of the audit. During this review period, the entity under audit is unable to release the financial statements to the public. Once the OSA completes the review of the financial statements, a release letter is issued to the entity under audit, allowing for release of the financial statements to the public.

The Audit Rule requires audits of fiscal years ending June 30 to be completed and submitted for review by December 15 of the same year. If the entity is unable to complete the audit prior to the deadline, it must request an extension from the OSA.

OMB Circular A-133

Because the NMFA receives significant amounts of federal funding ($12,929,139 in fiscal year 2010), the NMFA is subject to the audit and reporting requirements of OMB Circular A-133, which governs the audits of recipients of federal funding. The Circular requires that additional work be done regarding the internal controls of the entity, the internal controls over expenditures of federal funding, and additional reporting requirements regarding findings. The Circular also establishes a report deadline of nine months subsequent to the fiscal year end of the entity. For the NMFA, the deadline would have been March 31, 2012.

State of New Mexico Comprehensive Annual Financial Report

Because the NMFA is a discretely presented component unit for the State of New Mexico, the State includes financial information for the NMFA in the CAFR. The CAFR is then reviewed by an IPA before being issued to the public.[9] The reviewing IPA will perform high-level analytical procedures and inquiries to provide limited assurance on the balances presented. Statements on Standards for Accounting and Review Services do not require representations from auditors of reports included in the CAFR; however, according to interviews with employees of the DFA, the firm that performs the review of the State's CAFR will request Independence letters from the auditors of those reports.

Background on the Role of the Independent Auditor

Auditing standards dictate and distinguish the responsibilities and functions of the IPA and management.

These standards clearly define the role of the auditor and management. The auditor is not to be used by management as a control to correct errors. Management is ultimately responsible for researching and applying proper accounting treatments. The auditor additionally has a responsibility to inform the Board in the event the audit process is interrupted or delayed.[10]

[9] This review is an attestation engagement that is narrower in scope than an audit.

[10] AU Section 110.02 states "The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because of the nature of audit evidence and the characteristics of fraud, the auditor is able to obtain reasonable, but not absolute, assurance that material misstatements are detected. The auditor has no responsibility to plan and perform the audit to obtain reasonable assurance that misstatements, whether caused by errors or fraud, that are not

Facts

On or about April 1, 2010, the NMFA reverted approximately $21 million to the State's general fund.

In January 2011, May was appointed DFA Secretary and became a member of the NMFA Board.

In January 2011, NMFA's senior management and Board began discussions about the ways in which the organization might mitigate an expected reversion to the State's general fund. The discussions centered on donating money to the State in lieu of reversion. Management believed that this approach would allow them to negotiate a smaller figure and protect the organization's financial integrity. The NMFA's management was specifically concerned with how national bond credit-rating agencies might view a second reversion in as many years and believed that it would give the appearance that State legislators might begin to regularly raid the NMFA to make up budget shortfalls.

On January 27, 2011, the NMFA received a legal advisory letter from the State Attorney General's Office (AGO) regarding the legality of transferring money from the NMFA's PPRF fund to the State's general fund. The AGO concluded that the NMFA Act prohibited the NMFA from doing so but that it did not prevent the State Legislature from reverting those same funds.

On April 13, 2011, Standard & Poor's Rating Services (S&P), a private national bond credit ratings agency, upgraded the NMFA's Senior Lien PPRF Bond (series 2011A) to an AAA rating and upgraded the rating of the Subordinate Lien Bond to AA.

On April 19, 2011, Moody's Investor's Service (Moody's), a private national bond credit ratings agency, assigned an Aa1 rating to the NMFA's Senior Lien PPRF Bond (series 2011A) and upgraded the rating of the Subordinate Lien Bond to Aa2.

Prior to April 28, 2011, the NMFA took approximately $18.6 million from uncommitted cash balances in several non-PPRF funds and contributed it to the State's general fund. This reduced many of those funds to a near zero balance.

On or about the third week of May, 2011, Campbell and Duff discussed how to classify the $18.6 million transfers. In the 2010 audited financial statements, the prior reversion was recorded as a reduction of appropriations revenue. According to Campbell, in April of 2011, when he recorded

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material to the financial statements are detected." AU Section 110.03 states that "The financial statements are management's responsibility. The auditor's responsibility is to express an opinion on the financial statements. Management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, initiate, authorize, record, process, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements. The entity's transactions and the related assets, liabilities, and equity are within the direct knowledge and control of management. The auditor's knowledge of these matters and internal control is limited to that acquired through the audit. Thus, the fair presentation of financial statements in conformity with generally accepted accounting principles is an implicit and integral part of management's responsibility. The independent auditor may make suggestions about the form or content of the financial statements or draft them, in whole or in part, based on information from management during the performance of the audit. However, the auditor's responsibility for the financial statements he or she has audited is confined to the expression of his or her opinion on them."

the 2011 reversions in the same way, the appropriations revenue balances were reduced to a zero or a negative number. Reporting revenues at this level would likely have negative consequences for how the public viewed the NMFA's financial stability and ability to back its bond issues, so Campbell decided to reclassify the 2011 contributions as grant expenses. Campbell stated that Duff agreed with the reclassification. Campbell subsequently reclassified the transfers as grant expenses and reclassified the 2010 revenues to match 2011 revenues in the 2011 Financials.

On May 21, 2011, CFO Duff was appointed interim CEO.

On May 31, 2011, Duff emailed Campbell to inquire whether the NMFA was prepared for GASB 54 reporting.

On June 1, 2011, the deadline for making an IPA recommendation passed. The NMFA never completed the recommendation despite having already communicated with Clifton Gunderson about handling the NMFA's 2011 audit. Clifton Gunderson was the contracted IPA for the NMFA's previous years' audits in 2010 and 2009.

On June 24, 2011, May was appointed Vice Chair of the Audit Committee.

On July 22, 2011, S&P assigned a rating of AAA to the NMFA's Senior Lien PPRF Bonds (Series 2011B1 and 2011B2).

On July 28, 2011, Moody's assigned an upgraded rating of Aa1 to the NMFA's Senior Lien PPRF Bonds (Series 2011B1 and 2011B2).

On August 9, 2011, Duff signed an engagement letter with Clifton Gunderson to serve as the IPA for the NMFA's 2011 audit. The letter lists his title as CFO though he was then serving as the interim CEO.

On August 9, 2011, Clifton Gunderson emailed Campbell to ask if their contract was approved by the OSA. The contract was never signed and/or submitted. Campbell did not respond.

On August 11, 2011, Campbell presented the 2011 Financials to the Board. Review of the audio recording of the meeting revealed that during his presentation, Campbell discussed the differences between appropriations revenue as it was presented in fiscal years 2011 versus how it was presented in 2010. Campbell stated that the

> ". . . biggest differences is in our appropriation revenue and this is sort of a classification issue and I'm wrestling with it. Right now, in the previous year, last year, we had given back to the state 21 million in revenues we had received in prior years that the state was having reverted to meet shortfalls. When we did that, we reduced our revenue in that year. This year we had contributed to the state shortfall 18.4 million. I think a better classification for our revenues is to be current to what our revenues actually are and when we actually do make a reversion to reflect it as an expense item, so in the current year I reflected it in grant expense, since we granted it back to the State, as nice as we are. So that's the major difference in our numbers."

The 2011 Financials were accepted and approved by the Board with no questions. Duff was present at this board meeting.

On August 20, 2011, Clifton Gunderson emailed Campbell to ask if final statements would be ready on August 23. Campbell did not respond.

On September 6, 2011, May was appointed CEO; Duff was named COO.

On September 23, 2011, Clifton Gunderson emailed Campbell and Duff and informed them that the 2011 audit was not complete. Clifton Gunderson stated that they had not received correspondence from the NMFA for "several weeks." Neither Duff nor Campbell responded. Clifton Gunderson appeared to make no further attempts to contact the NMFA that year. They did not complete the audit and did not inform the NMFA Board.

On October 25, 2011, S&P assigned a rating of AAA to the NMFA's upcoming sale of Senior Lien PPRF Bonds (Series 2011C).

On November 1, 2011, Moody's assigned a rating of Aa1 to the NMFA's upcoming sale of Senior Lien PPRF Bonds (Series 2011C).

On November 17, 2011, Campbell presented the 2011 Financials to the Board and included comments regarding the $18.6 million transfers.

On December 6, 2011, Campbell emailed Duff a list of financial management items that needed to be addressed. The list included an item pertaining to the funding of programs not receiving revenue (i.e. funds with minimal to no revenue and the cash balances of which were transferred to the State's general fund).

December 10, 2011, a Saturday, was listed in the forged audit as the issue date of the 2011 audit as well as the date on which an exit conference took place. No such conference occurred on that date. Duff, Clifton Gunderson, and members of the Audit Committee were also listed as having attended that exit conference.

On December 13, 2011, the New Mexico Department of Finance and Administration (DFA) emailed Campbell requesting a draft of the financial statements. Campbell did not respond.

On December 15, 2011, the OSA's audit submission deadline passed. The NMFA did not submit an audit.

On December 19, 2011, Campbell told Duff that the 2011 audit had been submitted to the OSA.

On December 28, 2011, the DFA sent a second request to Campbell for draft financial statements. Campbell did not respond.

In early January, 2012, Clifton Gunderson emailed Campbell and Duff, informing them that the 2011 audit was past due. Neither Campbell nor Duff responded.

On January 3, 2012, the DFA emailed Campbell to request name and contact information for the IPA. Campbell did not respond.

On January 5, 2012, the DFA emailed Duff and informed him that Campbell was not providing the requested information. Duff forwarded the email to Campbell asking him to respond to the DFA.

On January 9, 2012, Campbell emailed incomplete draft financials and auditor information to the DFA.

On January 12, 2012, the DFA emailed Campbell and requested a complete draft.

On January 12, 2012, the NMFA's chief financial strategist[11] emailed Campbell and asked when the audit would be completed so it could be provided to rating agencies.

According to a timeline of events authored by Duff and seized pursuant to a search warrant, on January 14, 2012, Duff wrote that the NMFA's chief financial strategist received an email from S&P, requesting a copy of the audit report. According to Duff, the chief financial strategist emailed Campbell and Campbell replied that the audit was expected from the OSA by February 11.

On January 26, 2012, the DFA emailed Campbell, Duff, and May and requested an update on the 2011 audit. The DFA wrote that the OSA had no information relating to the NMFA's external audit.

On January 27, 2012, May emailed Duff and Campbell and asked why the DFA needed the requested information. In a second email, May informed the DFA that Campbell would provide it.

Sometime prior to February 3, 2012, Campbell created an audit report, which included three fabricated IPA opinions. In February or March of 2012, Campbell forged the signature of Clifton Gunderson on the opinions.[12]

On February 1, 2012, the DFA responded to May and informed him that the NMFA's late audits have been a "significant contributing factor on the lateness of the CAFR."

On February 3, 2012, Campbell emailed the DFA, attaching what he described as the "final draft" of the audit report. Campbell wrote "I need [sic] touch base with the State Auditor's Office regarding the report submitted by our auditors." The attached auditor's report was unsigned.[13]

[11] According to Michael Zavelle, Chief Financial Strategist for the NMFA, the Chief Financial Strategist is functionally responsible for determining the best approach to processing and marketing loans based on both current and expected conditions.

[12] See "Count 1" in Grand Jury Indictment, State of New Mexico v. Gregory M. Campbell, No. D-101-CR-2012-00491 (1st Jud. Dist. Sept. 21, 2012).

[13] See "Count 2" in Grand Jury Indictment, State of New Mexico v. Gregory M. Campbell, No. D-101-CR-2012-00491 (1st Jud. Dist. Sept. 21, 2012).

On February 7, 2012, Campbell emailed Sutin, Thayer and Brown, outside legal counsel for the NMFA, and stated that the audit had not been released by the OSA. He wrote that he had the draft and was awaiting the OSA's approval.

On February 22, 2012, Campbell emailed an unsigned draft of the fraudulent 2011 audit to Duff. Duff stated he reviewed the document and said that it looked normal and appropriate. Two months prior, however, Campbell had informed Duff that the audit had already been submitted to the OSA. Duff did not question Campbell's actions in providing him with a draft audit even though a completed report was presumably available.

On March 1, 2012, Campbell informed Duff of his decision to resign his position at the NMFA.

On March 1, 2012, the chief financial strategist emailed both the NMFA's Investment Adviser Representative (IAR) and the NMFA's outside legal counsel for disclosure preparation related to bond sales (Disclosure Counsel). The chief financial strategist wrote that Campbell was able to get the OSA to release the audit and that the NMFA would receive the release letter on March 5, 2012.

On March 7, 2012, the chief financial strategist emailed Wells Fargo and wrote that the OSA was supposed to release the audit that day and that it was originally to be released February 1. The chief financial strategist further stated that the delay was due to staffing issues at the OSA.

On March 7, 2012, the NMFA conducted a ratings call regarding the upcoming sale of their PPRF Senior Lien Bonds (Series 2012A). The chief financial strategist told the NMFA's Disclosure Counsel that the 2011 audit still had not been released by the OSA. He mentioned having someone "higher up the chain" talk to the OSA. When the chief financial strategist suggested this to Campbell, Campbell responded that he would take care of it.

On March 9, 2012, Campbell told Duff and the chief financial strategist that the OSA had released the audit.

On March 12, 2012, Campbell provided the forged 2011 audit to the chief financial strategist, who in turn, posted it on the NMFA website the same day.[14] Campbell additionally emailed the forged 2011 audit to the NMFA's Disclosure Counsel for inclusion in a preliminary offering statement (POS) for an upcoming bond sale of Senior Lien PPRF Bonds (Series 2012A).[15] On the same day, the chief financial strategist emailed the forged audit to S&P, writing that the OSA released the audit without comment on March 19, 2012 and to Wells Fargo, writing that the audit was released by the OSA and that the auditors submitted it on December 10, 2011.

On March 16, 2012, S&P assigned a rating of AAA to the NMFA's upcoming sale of Senior Lien PPRF Bonds (Series 2012A).

[14] See "Count 3" in Grand Jury Indictment, State of New Mexico v. Gregory M. Campbell, No. D-101-CR-2012-00491 (1st Jud. Dist. Sept. 21, 2012).

[15] See "Count 4" in Grand Jury Indictment, State of New Mexico v. Gregory M. Campbell, No. D-101-CR-2012-00491 (1st Jud. Dist. Sept. 21, 2012).

On March 21, 2012, Moody's assigned a rating of Aa1 to the NMFA's upcoming sale of Senior Lien PPRF Bonds (Series 2012A).

On March 22, 2012, the NMFA held a competitive bid bond sale. There were eight bidders, each of whom received a copy of the forged audit and misclassified financial statements as part of the POS.[16]

On March 22, 2012, May announced during a board meeting that the 2011 audit was complete and was awaiting approval from the OSA with an "unqualified opinion and no findings." This occurred three months after Campbell told Duff that the audit was complete and had been submitted to the OSA.

On March 28, 2012, the NMFA emailed the Government & Finance Officers Association (GFOA) regarding its submittal of their 2011 Financials to the GFOA review program. The NMFA requested an extension, explaining that the OSA had not yet signed off on the 2011 financials. The NMFA further explained that it could not distribute the financials until the OSA did so.

On March 31, 2012, the Federal Audit deadline passed. The NMFA did not submit the 2011 audit to the Federal Audit Clearinghouse.

On or about March 31, 2012, the NMFA caused the forged 2011 audit to be uploaded to the Municipal Securities Rulemaking Board (MSRB) website as an annual disclosure.

On March 31, 2012, the NMFA's OMB A-133 audit deadline passed.

On April 23, 2012, the Audit Committee met. An exit conference was planned: Duff and May were present but no representative of Clifton Gunderson, allegedly scheduled to be there, attended the meeting. During the meeting, Campbell presented the fraudulent audit and stated that it contained no findings although the forged document actually did contain a finding (which was mistakenly carried over from the 2010 audit). The committee accepted the report. According to Duff, he later instructed Campbell to arrange for Clifton Gunderson to attend the April 27 Board meeting so as to satisfy the requirement that the IPA physically attend the exit interview.

At the April 27, 2012, Board meeting, the Audit Committee announced that the 2011 audit was accepted with an unqualified opinion and zero findings.

On May 10, 2012, the NMFA posted an "incorporation by reference" disclosure to the MSRB's website. This disclosure had the effect of linking the forged audit report to all of the NMFA's outstanding bond issues.

[16] See "Counts 5-12" in Grand Jury Indictment, State of New Mexico v. Gregory M. Campbell, No. D-101-CR-2012-00491 (1st Jud. Dist. Sept. 21, 2012).

On May 23, 2012, the NMFA was added to the OSA's "at risk" designation list. The list identifies entities that are late in submitting their annual audit.

On May 23, 2012, Greg Campbell submitted his resignation letter.

On May 24, 2012, the OSA sent an "at risk" letter to May, stating that the NMFA's audit was not filed.

June 8, 2012 was Campbell's last day at the NMFA.

On June 26, 2012, the NMFA was again included on the OSA's "at risk" designation list.

On or about June 30, 2012, John Duff called Clifton Gunderson to discuss the upcoming FY 2012 audit. Clifton Gunderson informed Duff that the 2011 audit had not been completed.

On or about July 2, 2012, Duff asked his accounting staff to look for communications between the NMFA and the OSA regarding the 2011 audit.

On July 3, 2012, the Legislative Finance Committee (LFC) emailed Duff and May to inquire why the NMFA was still on the OSA's "at risk" list.

On July 5, 2012, during a series of email and phone communications between Duff, the NMFA's new Controller, and Clifton Gunderson, Clifton Gunderson informed the NMFA that the 2011 audit was never issued.

On July 6, 2012, Duff emailed the LFC regarding the "at risk" list. He wrote

> "You won't believe what the problem is - they have no record that we ever submitted a report to them . . . I recall seeing the letter from the State Auditor releasing the report for distribution, so I know they received it. . . . several months ago, someone told us that we were on the "at risk" list."

On July 6, 2012, Duff emailed Clifton Gunderson and requested delivery receipt of the audit.

On July 7, 2012, the OSA called Duff and stated they were still looking into the audit.

On July 7, 2012, Duff called Clifton Gunderson and explained that the OSA "lost" the audit. Clifton Gunderson said he would check on the audit the following Monday morning.

On July 9, 2012, the chief financial strategist had a brief conversation with Duff regarding "problems" with the audit. The chief financial strategist additionally informed the NMFA's Disclosure Counsel of "problems" with the audit.

On July 9, 2012, Duff emailed the forged 2011 Audit Report to Clifton Gunderson for review. Duff called Clifton Gunderson, who stated that the firm had never completed the audit.

On July 9, 2012, the OSA confirmed with Duff that the 2011 Audit Report was not filed.

On July 9, 2012, Duff informed May that the 2011 Audit Report was a fake.

On July 10, 2012, Clifton Gunderson confirmed to May and Duff that they had not completed a 2011 audit.

On July 10, 2012, the chief financial strategist disclosed "problems" with the audit to outside agencies on a disclosure call.

On July 11, 2012, May informed State police and the OSA of the forged 2011 Audit Report.

On July 12, 2012, the NMFA issued a press release regarding the forged 2011 Audit Report.

On July 12, 2012, the OSA designated the NMFA for a Special Audit.

On July 12, 2012, the State Police informed May that they would defer to an independent investigation before they would become involved.

On July 13, 2012, Moody's placed the NMFA's PPRF Aa1-rated Senior Lien and Aa2-rated Subordinate Lien Bonds under review for downgrade, citing "weak internal controls over financial reporting." The ratings affected $1.26 billion in outstanding total debt.

On July 13, 2012, the Securities Division initiated an investigation.

On July 18, 2012, S&P placed the NMFA's AAA ratings for Senior Lien bonds and its AA ratings for Subordinate Lien bonds on CreditWatch with negative implications, citing a "potential lack of oversight or fraud regarding the authority's financial position."

<u>Findings: Generally</u>

Findings are based on information collected during the course of the investigation and include publicly accessible information and documents; interviews with representatives from the IPA, the OSA, NMFA Board members, and NMFA staff; and documents obtained through subpoenas and by means of a search of NMFA offices pursuant to a warrant.

Criminal Activity

Campbell intentionally misrepresented the 2011 financial statements as being audited and created audit opinions that he intentionally misrepresented as authored by the IPA [Clifton Gunderson]. He additionally forged Clifton Gunderson's signature on the fraudulent audit opinions and disseminated the consolidated audit report to members of the NMFA staff. In doing so, Campbell was fully aware that the report would be made available to the public at large and provided to bidders in an upcoming bond sale. Campbell also provided the document to the DFA for inclusion in the CAFR. In addition, Campbell misrepresented account balances included in the audit report to make NMFA revenues appear more substantial than they were. These actions comprised multiple violations of New Mexico law.

Division agents found no evidence that Campbell engaged in these activities for personal monetary gain. He appears instead to have been motivated by a desire to protect the NMFA's bond ratings and by internal and external pressures to meet statutory and other bond sale deadlines which required completion and submission of the 2011 Audit Report. These pressures were exacerbated by his workload, insufficient accounting staff, outdated accounting procedures, and his own prioritization of the annual audit.

Procedural Breakdowns

Campbell's actions were made possible by a number of failures in process, review, and control.

Procedural Failures

- The IPA recommendation and audit contract were never completed and sent to the OSA;
- The NMFA never submitted draft financial statements to the IPA;
- As a result, the audit fieldwork was never completed;
- A management representation letter was never signed;
- The IPA was not present at, and did not participate in a scheduled exit conference;
- This exit conference was scheduled to occur four months after the audit report was supposedly submitted to the OSA; and
- The required exit conference was never held.

Lack of substantive review by NMFA management and Board

- The forged audit report falsely indicated that an exit conference was held on December 10, 2011 and listed members of NMFA management and the NMFA Board who were supposedly present at the exit conference;
- The forged audit report contained a number of formatting errors, inconsistencies, and other errors that would have been apparent to a knowledgeable reviewer;
- At a later Audit Committee meeting, at which the exit conference with the IPA was scheduled to occur, Committee members accepted the audit and later reported their acceptance of the audit to the full Board, despite having never reviewed the document and despite the absence of the IPA at that meeting.
- Duff conducted an inadequate, cursory review of the 2011 Audit Report;
- Duff, who was present at the above Audit Committee meeting, failed to inform the Audit Committee or otherwise raise concerns about the ordinal problem of holding an exit conference four months after the Audit was reportedly submitted to, and accepted by the OSA; and
- Duff failed to inform the Audit Committee that absent the IPA, the NMFA had yet to conduct a valid exit conference as defined by the Audit Rule.

Lack of adequate supervision by NMFA management

- Duff ignored DFA complaints that Campbell failed to provide requested documents for inclusion in the CAFR;
- In response to the same complaints, May instructed Campbell to provide the requested documents but failed to investigate or question the reason(s) for the delay;
- Senior management had no involvement with the OSA, even after there were indications that the audit was never issued as Campbell had claimed.

Findings: Failure of Internal Controls

Organizational Problems

During the period that Duff served as CFO, the COO position was vacant. While he served as interim CEO, both the CFO and COO positions were vacant. Finally, in September 2011, when the Board appointed a permanent CEO, Duff was promoted to COO and the CFO position remained vacant. NMFA management did not appoint interim replacements and they appear not to have formally redistributed the work of those positions during the period in which they were vacant.

Duff stated that once he became COO, he became less involved in tasks that were clearly the purview of the CFO. Interviews with NMFA staff and Board members, however, indicate that Duff continued to operate as de facto CFO in addition to his formal position as COO, though he was not formally designated as such. After Duff's promotion, Campbell was offered, but declined, the position of CFO. As a result of the vacancies, Duff served as Campbell's direct supervisor during each of Duff's three positions with the NMFA.

The organizational structure of the NMFA was designed, or it evolved over time, to ensure efficient accomplishment of the organization's mission. The primary role of senior management in this structure is to provide organizational direction and oversight. As such, the organizational structure is an important internal control. The vacancies and absence of clearly defined roles during this period of transition represented a breakdown of internal controls.

Additionally, inadequate staffing of the accounting department and the Controller's excessive workload appear to have contributed to breakdowns in the audit process—resulting in missed deadlines and influencing Campbell's decision to forge the audit report.

Finally, the NMFA began, around 2004, to solicit higher ratings from the national ratings agencies. Higher ratings enabled the NMFA to loan money at lower interest rates. Over time, this goal appears to have led to an institutional culture that placed an excessive importance on bond ratings. According to interviews conducted with staff and Board members, the NMFA's concern for ratings drove the NMFA's decision to "donate" money to the State in lieu of a reversion and its decision to misclassify that donation as a grant expense. The same concern for ratings appears to have likewise influenced Campbell's decision to create and submit a fraudulent audit.

NMFA Management

Two senior members of the NMFA management had supervisory control over Campbell and responsibility for completion of the audit. In his capacity as COO, Duff served as Campbell's immediate supervisor and had direct responsibility for ensuring the timely completion of the 2011 audit in accordance with applicable rules and standards. As CEO, May served as Duff's immediate supervisor and had ultimate responsibility for the completion of the audit.

John Duff

In accordance with GAAP, management is responsible for preparing the financial statements of an entity. In accordance with the organizational structure and past practice of the NMFA, the

Controller compiled the financial statements, but the responsibility for their accuracy fell to the CFO. This general responsibility included reviewing the appropriateness of changes to, or reclassification of balances, and reviewing changes to reporting requirements, such as the new GASB pronouncement, to ensure proper implementation. Based on interviews with NMFA employees, Duff acted in the role of CFO and supervised Campbell during the 2011 audit. In this supervisory capacity, the CFO served as an internal control, which should have prevented the issuance of financial statements that contained a misclassification of expenses or lack of proper disclosure.

According to information gathered during the investigation, Duff was extremely knowledgeable of audit processes and requirements. He had been intimately involved in the NMFA's audit process in both 2009 and 2010 and during the latter year's audit, he signed the representation letter and attended the audit exit conference. During an interview with agents, Duff stated that he was very familiar with the deadline and due date requirements of the audit.

During an interview with agents, Duff indicated that the NMFA's accounting treatment of the \$18.6 million transfer was of minor concern because if the NMFA's treatment was deemed inappropriate, he knew that the IPA would correct it.

According to a written timeline, which was prepared by Duff and seized pursuant to a search warrant, Campbell notified Duff that the audit was provided to the OSA by the required deadline; however, based on his familiarity with, and previous participation in the audit process, Duff would have been aware that the NMFA had failed to complete multiple required steps in the audit process prior to submission of the 2011 Audit Report to the OSA.

Duff would have been aware that the NMFA had not completed a representation letter. In his capacity as Campbell's supervisor, Duff would have been required to sign the management representation letter.

Duff would have been aware that the NMFA had not completed an audit contract and IPA recommendation. In his capacity as Campbell's supervisor, Duff was required to sign the IPA recommendation and the audit contract. Duff signed those documents in previous years.

Duff was present at the April 2012 Audit Committee meeting during which the exit conference was scheduled to occur. The IPA, however, did not attend this meeting as required by the Audit Rule. Duff stated that he was familiar with the requirement that an exit conference be held prior to the issuance of the audit and also knew that no exit conference for the 2011 audit had yet been held. As Campbell's supervisor, he would have been required to attend that exit conference and as he was under the impression that the audit had already been submitted to the OSA four months previously, Duff would have also known that the NMFA violated the Audit Rule. Rather than disclose this violation, Duff instructed Campbell to arrange for the IPA to be physically present at the upcoming Board meeting in order to satisfy the exit conference requirement.

At that meeting, the Audit Committee accepted the audit though no exit conference had taken place. Duff did not raise concerns about the ordinal problem of holding an exit conference four months after the Audit was reportedly submitted to, and accepted by the OSA. Duff further failed to inform the Committee that that absent the IPA at this meeting, the NMFA had yet to conduct a valid exit conference as defined by the Audit Rule.

Duff appeared to ignore complaints by a DFA employee that Campbell was unresponsive to requests for the 2011 audit.

Campbell provided Duff with a copy of the forged 2011 Audit Report in February 2012, two months after the audit was due. The report contained inconsistencies and errors that indicated the documents were not prepared by a public accounting firm. These included errors regarding page numbers in the audit report; unusual spacing and formatting of balances; negative numbers portrayed in a non-standard way (rather than parenthetically); disclosures that made reference to events from prior years not included in the financial statements presentation; and the absence of other required disclosures. The financial statements, moreover, were not in compliance with new reporting requirements under GASB 54 (though Duff had previously instructed Campbell to include these changes) and the audit report indicated that an exit conference had occurred on Saturday, December 10, 2011, listing Duff as an attendee. Duff stated that he reviewed the audit report and financials and did not notice any of the errors in balances, disclosure, or formatting. There was no communication between Duff, Campbell, and the IPA regarding the requirement to file an audit with the Federal Audit Clearinghouse. Duff would have been aware of this requirement through his familiarity with, and previous participation in that process.

Richard May

May served as Cabinet Secretary for the DFA from January 2011 to September of 2011. As part of his role as DFA Secretary, May served on the Board of the NMFA. In September 2011, May was appointed CEO of the NMFA.

The CEO is a key member of management of any organization.[17] The 1992 NMFA Act more specifically identifies the CEO as the top management official at the NMFA and organizational representative of the Board:

> "The chief executive officer of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority."

Though May, in his capacity as CEO, was not directly responsible for completing the 2011 Audit Report and Financials, he was nonetheless ultimately responsible for oversight of their completion as well as for ensuring their accuracy and timeliness.

In January and February of 2012, the DFA informed May that Campbell was not responding to requests to provide the DFA with audit-related documents and further told May that the NMFA was regularly late in submitting the annual audit. Having not yet received a copy of the

[17] AU Section 380.03 (b) states "*Management* means the person(s) responsible for achieving the objective of the entity and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management is responsible for the financial statements, including designing, implementing, and maintaining effective internal control over financial reporting."

presumably completed audit himself, May should have identified this as a sign that something was amiss and investigated the complaints. Instead, May instructed Campbell to provide the documents, giving Campbell an opportunity to continue his activities and perhaps unwittingly placing pressure on Campbell that resulted in the fraudulent creation, forgery, and dissemination of the 2011 Audit Report.

During an interview with agents, May stated that he was not familiar with the audit process or the financial statements of the NMFA: he had experience with budgeting but did not possess accounting or finance experience. May uncritically accepted Campbell's claim that the 2011 Audit Report was complete and had been accepted by the OSA. According to Lonnie Marquez, chair of the Audit Committee, May [in his capacity as CEO of the NMFA] attended the Audit Committee meeting held on March 22, 2012 and informed its members that "the State Auditor has approved the NMFA audit with zero findings."

May's lack of relevant education and experience in accounting contributed to the breakdown of internal controls that allowed the forged audit report to be disseminated to the public; however, May was, during the prior year's audit, a member of the NMFA Audit Committee and should have possessed a more firm understanding of the audit process and financial reporting procedures as they related to the NMFA.

NMFA Board

Lack of Engagement with the Audit Process: The Board relies heavily on the Audit Committee and even more on senior management and staff to ensure that the external audit is conducted correctly and in a timely manner; nonetheless, the Board bears ultimate responsibility for the activities of the organization as a whole and possesses final approval authority on all that the organization does. Members of the Board, therefore, serve as an important internal control on the audit process.

On August 11, 2011, Campbell presented the 2011 Financials to the Board. The 2011 Financials were accepted and approved by the Board with no questions, despite Campbell's admission that he had "wrestled" with how best to treat the NMFA's contribution to the State. On March 22, 2012, during a public meeting of the Board, May informed the Board that "the State Auditor has approved the NMFA audit with zero findings." This pronouncement came four months after the Audit was due to the OSA. No member of the Board, including members of the Audit Committee who were present, raised questions about the delay. Agents found no evidence that Board members inquired about the status of the 2011 audit during the period in which it was scheduled to be conducted or after December 15—the date that Board members knew to be the deadline for submission of the audit report to the OSA. Board members likewise did not question the long delay in reporting submission of the 2011 Audit Report to the OSA. At least half of the Board's membership possessed substantial knowledge and experience with the State audit process.

Additionally, there is no evidence that the Board raised concerns that its Audit Committee rarely met, despite the over-reliance it seemed to place on that committee's recommendations.

NMFA Audit Committee

Lack of Communication and Poorly Understood Scope of Responsibility: Several members of the Audit Committee expressed a lack of communication between the general Board and the Audit Committee and a lack of understanding of their functional scope and specific responsibilities with regard to the annual external audit. This lack of communication and understanding on the part of committee members contributed to a breakdown of internal controls, which led to the uncritical and unanimous approval of the 2011 audit report as well as its dissemination to governmental and financial entities, ratings agencies, and potential investors. Furthermore, the Audit Committee lacked written policies and procedures and maintained no formal records or minutes documenting its meetings or decisions.

Failure to Convene: During May's tenure as CEO, Committee meetings were scheduled, at regular monthly intervals, a year in advance. Committees, however, have the flexibility of not holding a meeting if the circumstances warrant. The Audit Committee met sporadically between June of 2011 and April of 2012 and did not meet at all in December 2011, the month the audit was due at the OSA. Additionally, there was no discussion of the audit recorded in the Board minutes from September 2011 until March 2012. Based on interviews of NMFA employees and Board members, the external audit was routinely discussed in previous years. No members of the Board or Audit Committee, however, inquired after the status of the 2011 audit. During interviews with agents, members of the Audit Committee cited time constraints as the primary reason for the limited number of meetings. These included individual outside commitments (e.g. job commitments), which were compounded by logistical and scheduling problems. According to Audit Committee members, all Board committee meetings are scheduled for the same day and the same room, which often results in unproductive waiting. The method of scheduling appears to have influenced the Committee's decisions to not meet.

Based on statements made by the Audit Committee chair, Lonnie Marquez, to agents, the long drive from Marquez's residence in Socorro to Santa Fe to attend Board and Committee meetings influenced his attendance record and, by extension, may have influenced the Committee's decisions not to meet. Marquez's term on the Board, furthermore, had ended in January 2012 but his replacement had not yet been named. He characterized his extended service to the Board as "a courtesy."

Additionally, Committee members stated that they did not meet if there was nothing to discuss. This further indicates that the Audit Committee took a passive approach to its charge of oversight of the external audit. To the extent that this characterized the Committee's approach, it had the effect of weakening internal controls that the Audit Committee should have exerted over the process.

Failure to Conduct Thorough Review: On April 22, 2012, on the morning of the planned exit conference, Campbell provided Audit Committee members with a copy of the forged audit in preparation for the planned exit conference. Additionally, Campbell presented the forged audit report during the meeting on behalf of the external auditor, who was not present. During interviews with agents, Campbell stated that the Audit Committee had no questions regarding the forged audit report.

A thorough review of the audit report by the Audit Committee would have alerted the committee to serious errors and the need for greater scrutiny. Members of the Audit Committee alluded to a number of reasons for their failure to thoroughly review the audit report. These included general time constraints due to other commitments and Campbell's failure to provide them with a copy of the audit well in advance of the meeting. Audit Committee members, however, did not ask for a postponement of the meeting in order to properly review the documents; nor did they review the document at any time prior to reporting their acceptance of it at the full Board meeting five days later.

Audit Committee members stated that they unreservedly trusted Campbell and took him at his word.

Findings: Failure of External Controls

External Auditor

Lack of Communication between Board and IPA: Auditing standards also require communication between the external auditor and "those charged with governance." These standards serve as an internal control to assist in preventing fraud or error on the part of management. Lack of communication between management and the Board and between the Board and the external auditor represents a breakdown of this internal control.[18]

The responsibility of the Board to communicate with the external auditor is noted above; however, the external auditor has an equal responsibility to communicate difficulties encountered during the audit with the Board. AU Section 380.39 states:

> "The auditor should inform those charged with governance of any significant difficulties encountered in dealing with management related to the performance of the audit. Significant difficulties encountered during the audit may include such matters as:
>
> - Significant delays in management providing required information.
> - An unnecessarily brief time within which to complete the audit.

[18] AU section 380.03 (a) defines "those charged with governance" as ". . . the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. In some cases, those charged with governance are responsible for approving the entity's financial statements (in other cases management has this responsibility). For entities with a board of directors, this term encompasses the term *board of directors* or *audit committee* used elsewhere in generally accepted auditing standards." AU Section 380.08 further states "This section focuses primarily on communications from the auditor to those charged with governance. However, effective two-way communication is also very important in assisting: (a) The auditor and those charged with governance in understanding matters related to the audit in context, and in developing a constructive working relationship. This relationship is developed while maintaining the auditor's independence and objectivity. (b) The auditor in obtaining from those charged with governance information relevant to the audit. For example, those charged with governance may assist the auditor in understanding the entity and its environment, in identifying appropriate sources of audit evidence, and in providing information about specific transactions or events. (c) Those charged with governance in fulfilling their responsibility to oversee the financial reporting process, thereby reducing the risks of material misstatement of the financial statements."

- Extensive unexpected effort required to obtain sufficient appropriate audit evidence.
- The unavailability of expected information.
- Restrictions imposed on the auditors by management.
- Management's unwillingness to provide information about management's plans for dealing with the adverse effects of the conditions or events that lead the auditor to believe there is substantial doubt about the entity's ability to continue as a going concern."

Employees of Clifton Gunderson communicated via email to Campbell in September 2011 that they were waiting on information, which was to be provided by Campbell, in order to complete the audit. A review of emails obtained during the search warrant revealed no other email communication between Clifton Gunderson and the NMFA between September 2011 and July 2012. During interviews, employees of the firm stated they communicated with members of NMFA management and the Board regarding the audit, but the firm was unable to provide copies of these communications. Division agents did not locate any information or emails that would corroborate those claims and NMFA employees and Board Members uniformly stated that they received no communications from the IPA during this period.

Additionally, the State Audit Rule states

> "As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report late, the auditor shall notify the State Auditor and oversight agency of the situation in writing. There must be a separate notification for each late audit report. The notification must include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the agency."[19]

Based on interviews with employees of the OSA, a written notification of a late audit was not received for the NMFA.

The failure of the IPA in both instances created a critical lapse in external controls, which, if properly employed, would have prevented the issuance of the forged audit.

Findings: Additional Contributing Factors

Staffing

During the time the audit was being prepared, the accounting department for the NMFA was understaffed. The department had two open positions: an Accountant III and the Chief Financial Officer. The Accountant III position was filled in February of 2012, while the Chief Financial Officer position remained open for the remainder of the period under investigation. This left a Controller, three Senior Accountants and two Accountants. These six employees were responsible for the entire financial reporting process including maintenance of general ledgers for 22 separate programs; reconciliation of all cash and investment accounts; consolidation of 22 programs into one financial statement; all accounts payable functions; and servicing on all

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[19] NMAC 2.2.2.9 A (5).

outstanding loans and bonds. Loan servicing included invoicing for the loans, receipt and recording of payments, and collections. Bond servicing included calculation and dispersal of bond interest payments. Of the six employees in the accounting department, only one held a Certified Public Accountant license current in the State of New Mexico.

For an organization of this size and complexity, the accounting staff was inadequate. The New Mexico Mortgage Finance Authority, which is the State component unit most comparable to the New Mexico Finance Authority, employs an accounting staff of ten (including a Controller and Assistant Controller), a Deputy Director of Finance and Administration, a Finance Manager, and a loan servicing staff of five. There were several discussions with upper management at budget meetings regarding the need for additional accounting staff, as the current staff was unable to maintain the current workload.

Accounting Procedures

In addition to the staffing issues in the accounting department, staff members of the NMFA described the processes used in the department as "old" and "antiquated." The NMFA did not have a functional loan servicing software. Loan servicing was performed using Word documents and Excel spreadsheets. All of the loan servicing was manually entered into the general ledger using journal entries. Additionally, the NMFA upgraded their accounting software during fiscal year 2011, which would have required extensive additional work from a short-staffed department. The consolidated financial statements, however, were all prepared by Greg Campbell using spreadsheets and Word documents instead of being prepared by the accounting software. The extensive use of manual procedures increased the likelihood of error and increased the ability of accounting staff to manipulate accounting data.

Conclusions

The NMFA released a forged audit, containing and omitting information that further misrepresented the financial balances of the company. This document was released to the public and provided to potential investors. The release of the forged audit involved criminal activity, which was made possible by the catastrophic systemic failure in the controls surrounding the audit process.

Most significantly, senior management, members of the Audit Committee and members of the Board failed to provide adequate oversight.

Organizational gaps, a lack of formal task assignments at a time of organizational transition, insufficient staffing levels in the accounting department, outdated accounting procedures, and a lack of communication at all levels contributed to a breakdown in internal controls.

This breakdown in internal controls was mirrored by a similar failure of an important external control—that of the IPA.

The lack of internal and external controls was exacerbated by a culture of complacency at the NMFA that downplayed the importance of the audit to investors; over-emphasized and over-prioritized the importance of bond credit-ratings; operated on the presumption that the external audit was a process that required little if any input from senior management, the Audit Committee, or the Board; and engendered the diffusion of responsibility that brought about an expectation that others in the process were providing the necessary controls.

These factors coalesced in a way that provided Campbell with both an opportunity and, to a lesser degree, the incentive to create and forge an audit report that misrepresented the finances of the NMFA.

Appendix A

List of Acronyms

AGO	New Mexico Attorney General's Office
CAFR	Comprehensive Annual Financial Report
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
CPA	Certified Public Accountant
DFA	New Mexico Department of Finance and Administration
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
GASB	Governmental Accounting Standards Board
GFOA	Government and Finance Officers Association
GGRT	Governmental Gross Receipts Tax
IAR	Investment Adviser Representative
IPA	Independent Public Accountant
LFC	New Mexico Legislative Finance Committee
MSRB	Municipal Securities Rulemaking Board
NMAC	New Mexico Administrative Code
NMFA	New Mexico Finance Authority
OMB	White House Office of Management and Budget
OSA	New Mexico State Auditor's Office
PPRF	Public Projects Revolving Fund
S&P	Standard and Poor's

Appendix B

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

ENDORSED
First Judicial District Court
SEP 21 2012
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO,
Plaintiff.

vs.

Gregory M. Campbell
Defendant.

No. D-101-CR-2012-00491

CRIMES CHARGED

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1: FORGERY (Make or Alter)

On or between January 9, 2012 and February 3, 2012, in Santa Fe County, State of New Mexico, the above named defendant with intent to injure, deceive, or cheat New Mexico Finance Authority, or another, changed a genuine audit report comprising multiple documents, so that its effect was different from the original or genuine; and this act was contrary to NMSA 1978, §30-16-10 A(1) and B.

COUNT 2: FORGERY (Issuing or Transferring a Forged Writing)

On or about February 3, 2012, in Santa Fe County, State of New Mexico, the above named defendant with intent to injure, deceive, or cheat Yvonne Herrera, or another, gave or delivered to Yvonne Herrera, CAFR Unit Manager for the Department of Finance and Administration, via email, a forged audit report comprising multiple documents, which had been changed so that its effect was different from the original or genuine; and this act was contrary to NMSA 1978, §30-16-10 A(2) and B.

COUNT 3: FORGERY (Issuing or Tranferring a Forged Document)

On or about March 12, 2012, in Santa Fe County, State of New Mexico, the above named defendant with intent to injure, deceive, or cheat investors of New Mexico Finance Authority, or another, gave or delivered to Michael Zavelle, Chief Financial Strategist for the New Mexico Finance Authority, via email, a forged audit report comprising multiple documents, for the purposes of posting on the New Mexico Finance Authority website for public viewing; and the audit report had been changed so that its effect was different from the original or genuine. This act was contrary to NMSA 1978, §30-16-10 A(2) and B.

COUNT 4: FORGERY (Issuing or Transferring a Forged Document)

On or about March 12, 2012, in Santa Fe County, State of New Mexico, the above named defendant with intent to injure, deceive, or cheat investors of New Mexico Finance Authority, gave or delivered, via email, to Brad Patterson, Disclosure Counsel of the Law Firm of Ballard Spahr, LLP, a forged audit comprising multiple documents, for the purpose of inclusion in a "Preliminary Official Statement" (POS) and Official Notice of Bond Sale for the NMFA's SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS SERIES 2012A; knowing it to have been changed so that its effect was different from the original or genuine; and contrary to NMSA 1978, §30-16-10 A(2) and B.

COUNT 5: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

On or about March 22, 2012, in Santa Fe County, State of New Mexico, the above named defendant did commit the crime of securities fraud. The defendant offered and sold a security to the investment firm of Hutchinson, Shockey, Erley & Co.

The defendant offered to sell and sold $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Hutchinson, Shockey, Erley & Co., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year (FY) 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a creditor relationship between Hutchison, Shockey, Erley & Co. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or
B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report;

and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501and 508, and 30-1-13.

<u>COUNT 6: FRAUDULENT SALE OF A SECURITY (Securities Fraud)</u>

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Guggenheim Securities, LLC, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between Guggenheim Securities, LLC and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or
B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 7: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Piper Jaffray, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between Piper Jaffray and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or
B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 8: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Wells Fargo Bank, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between Wells Fargo Bank and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 9: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Morgan Stanley & Co., Inc., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between Morgan Stanley &

Co., Inc. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 10: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Baird & Co., Inc., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled

"Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between Baird & Co., Inc. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 11: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm J.P. Morgan Securities, LLC, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled

"Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between J.P. Morgan Securities, LLC and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508 , and 30-1-13.

COUNT 12: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell $22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT

REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm KeyBanc Capital Markets, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a POS that included fiscal year FY 2011 financial statements; a forged document entitled "Independent Auditor's Report"; a forged document entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*"; and a forged document entitled "Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133." The bond represented a potential creditor relationship between KeyBanc Capital Markets and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to the forgery of an audit report, comprising multiple documents, created between the dates of January 9, 2012 and February 3, 2012; the misleading classification of figures related to the reversion of monies to the state general fund in the FY 2011 financial statements included in said audit report; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 13: CONSPIRACY TO COMMIT RACKETEERING

On or between May 1, 2011 and July 1, 2012, in Santa Fe County, State of New Mexico, the defendant, with John T. Duff and/or another person or persons, by words or acts, agreed together to commit racketeering; and they intended to commit racketeering, contrary to NMSA 1978, § 30-28-2 and § 30-42-4(D).

COUNT 14: RACKETEERING

On or between May 1, 2011 and July 1, 2012, in Santa Fe County, State of New Mexico, the defendant committed the crime of racketeering while associated with an enterprise, namely the New Mexico Finance Authority (NMFA). The above named defendant operated as Controller in the purported operation of utilizing financing mechanisms to leverage and maximize the State's capital investments in State and local projects. The defendant conducted the affairs of the enterprise by intentionally engaging in a pattern of racketeering activity. The pattern of racketeering activity included two or more crimes of:

A. Forgery as charged in Counts 1; and Counts 2, 3 and 4 (Issuing and Transferring) in connection with the Forgery of an independent auditor's report comprising multiple documents, and its issuance to both external and internal recipients; and,

B. Securities Fraud as charged in Counts 5, 6, 7, 8, 9, 10, 11 and 12 in connection with the NMFA's dissemination of the Preliminary Official Statement and sale of SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS SERIES 2012A for $22,655,000.00 on March 22, 2012, contrary to NMSA 1978, §30-42-1 through § 30-42-5 and 30-1-B.

The names of the witnesses upon whose testimony this Indictment is based are as follows:

Benjamin Baker, Special Agent in Charge
NM/RLD Securities Division

Anne Layne, Forensic Analyst
NM/RLD Securities Division

Louis Straney, Securities Litigation Expert Consultant

I hereby certify that the foregoing Indictment is a True Bill. as to counts 1-12
No True Bill as to counts 13-14

Shawna Hechanadel
Foreperson

9/20/12
Date

APPROVED AS TO FORM:

Patrick McNertney
Patrick McNertney
Special Assistant District Attorney

9-20-12
Date

CASE INFORMATION

NO.	D-101-CR-2012-00491
NAME:	GREGORY M. CAMPBELL
DOB:	[redacted]
SSN:	
Address:	

BOOKING/ARREST DATE:	08/8/2012
BOOKING/ARREST#:	12121007306
DEF. ATTY:	DAMIAN T. HORNE

PHYSICAL DESCRIPTION OF DEFENDANT:

Height: 6’ 1”
Weight: 195
Race: BLACK
Eye Color: BROWN
Hair Color: BLACK
Other:

PENALTIES

COUNT: 14 2^{ND} Degree Felony
COUNTS: 5, 6, 7, 8, 9, 10, 11, 12 3^{RD} Degree Felonies
COUNTS: 1, 2, 3, 4 , 13 4^{TH} Degree Felony

4th Degree Felony: Basic sentence of 18 months imprisonment and not more than $5,000 fine.
3rd Degree Felony: Basic sentence of 3 years imprisonment and not more than $5,000 fine.
2nd Degree Felony: Basic sentence of 9 years imprisonment and not more than $10,000 fine.
1st Degree Felony: Basic sentence of 18 months imprisonment and not more than $5,000 fine.
USE OF FIREARM ALTERATION TO BASIC SENTENCE (FE): Basic sentence of imprisonment increased by 1 year for first offense in which a firearm is used and 3 years for subsequent offenses in which a firearm is used.
USE OF HATE CRIME ENHANCEMENT: Basic sentence of imprisonment is increased by one (1) year, unless second offense, then the basic sentence is increased by two (2) years..

Special Penalty: (Receiving or Transferring a Stolen Vehicle (Possession) only) Basic sentence of one year and/or $5,000 fine.
Misdemeanor: Less than 1 year in the County Jail and/or not more than $1,000 fine.
Petty Misdemeanor: Not more than 6 months in the County Jail and/or not more than $500 fine.

Penalty for Driving While Under the Influence, Felony Offense:(4th or Subsequent Offense): Basic sentence of 18 months and not more than $5,000 fine, including a mandatory jail term of not less than 6 months.
Penalty for Driving While Under the Influence - Misdemeanor: If 1st Offense, basic sentence is maximum 90 days jail and $500 fine, and if aggravated an additional 48 hours jail time; if 2nd Offense, basic sentence is mandatory 72 hours in jail and $500 fine to maximum of 364 days and $1,000 fine, and if aggravated an additional 96 hours jail time; if 3rd Offense, basic sentence is a mandatory 30 days in jail and $750 fine to maximum of 364 days and $1,000 fine, and if aggravated an additional mandatory 60 days jail time.
Penalty for Driving While License Suspended or Revoked: Traffic Code Misdemeanor, Special Penalty: not less than 4 days nor more than 364 days and fine up to $1,000 (non-DWI related suspension/revocation); or not less than 7 consecutive days imprisonment and mandatory fine not less than $300 nor more than $1,000 (DWI revocation).
Penalty for Reckless Driving: Upon first conviction, basic sentence of 5 days to 90 days imprisonment, and/or $25 to $100 fine. Upon a second or subsequent conviction, basic sentence of 10 days to 6 months imprisonment, and/or $50 to $1,000 fine.
Penalty for Traffic Code Misdemeanor: fine of not more than $300 or imprisonment for not more than 90 days or both.
Penalty Assessment Misdemeanor: See Schedule in Traffic Code, Section 66-8-116.

1st Degree Felony for Child Abuse (Intentionally Caused) (Resulting in Death) (Child Under 12): Life imprisonment.
2nd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 15 years but not less than 10 years nor more than 20 years imprisonment and not more than $12,500 fine.
3rd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 6 years but not less than 4 years nor more than 8 years imprisonment and not more than $15,000 fine.

2nd Degree Felony, Sexual Offense Against A Child: Basic sentence of 15 years imprisonment and not more than $12,500 fine.
3rd Degree Felony, Sexual Offense Against A Child: Basic sentence of 6 years imprisonment and not more than $5,000 fine.

OPEN CHARGE OF MURDER
Penalty for FIRST DEGREE MURDER (Willful and Deliberate) or (Depraved Mind)

CAPITAL FELONY: Life Imprisonment

SECOND DEGREE MURDER: Basic sentence of 15 years imprisonment and not more than $12,500 fine.

VOLUNTARY MANSLAUGHTER: Basic sentence of 6 years imprisonment and not more than $15,000 fine.

INVOLUNTARY MANSLAUGHTER: 4th Degree Felony: Basic sentence of 18 months imprisonment and not more than $5,000 fine.

Penalty for FIRST DEGREE MURDER (Felony Murder):

CAPITAL FELONY: Life Imprisonment

STATEMENT OF TRUE BILL

	True Bill	NO True Bill
Count 1	X	
Count 2	X	
Count 3	X	
Count 4	X	
Count 5	X	
Count 6	X	
Count 7	X	
Count 8	X	
Count 9	X	
Count 10	X	
Count 11	X	
Count 12	X	
Count 13		X
Count 14		X

9/20/12
Date

Shawna Hochanadel
Foreperson