



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-6200

NO. 2008-1134-30

INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF THE
DORCHESTER DIVISION OF THE
BOSTON MUNICIPAL COURT DEPARTMENT OF
THE MASSACHUSETTS TRIAL COURT
JULY 1, 2006 TO DECEMBER 31, 2007

OFFICIAL AUDIT
REPORT
AUGUST 6, 2009

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The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. Chapter 211B of the Massachusetts General Laws provides for the Boston Municipal Court Department to have eight divisions, each having specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and a Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Dorchester Division (DD) of the Boston Municipal Court Department presides over civil and criminal matters falling within its territorial jurisdiction of the community of Dorchester. During the period July 1, 2006 to December 31, 2007, DD collected revenues of \$2,778,245, which were disbursed to the Commonwealth and to the community of Dorchester. In addition to processing civil entry fees and monetary assessments on criminal cases, DD was the custodian of 2,586 cash bails amounting to \$1,591,204 and 168 small claim deposits totaling \$16,800 as of December 31, 2007.

DD is also responsible for conducting civil motor vehicle infractions (CMVI) hearings. Although DD does not collect the associated monetary assessment when a motorist is found responsible for a CMVI, it is required to submit the results of the hearing to the Registry of Motor Vehicles, the agency that is responsible for the collections.

DD operations are funded by appropriations under the control of either the Division, the Administrative Office of the Trial Court (AOTC), or the Office of the Commissioner of Probation. According to the Commonwealth's records, expenditures associated with the operation of the Division were \$3,674,295 for the period July 1, 2006 to December 31, 2007.

The purpose of our audit was to review DD's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and criminal and civil case activity for the period July 1, 2006 through December 31, 2007.

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1. IMPROVEMENTS NEEDED IN DEVELOPING AN INTERNAL CONTROL PLAN AND CONDUCTING PERIODIC RISK ASSESSMENTS

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Our review of internal controls found that DD has made progress in developing an internal control plan, but additional work is needed to complete the plan. The DD prepared internal control documents that outline overall internal control procedures and concepts; however, the DD needs to fully document its risk assessment, which would be

used to determine what internal control procedures are needed to minimize the identified risks. The plan also needs to have written procedures communicating to employees the information necessary for them to implement established policies and carry out their responsibilities. DD officials are aware of the changes needed and plan to make the necessary updates.

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Our review of the Probation Office's detail Long Trial Balance (LTB) totaling \$240,411 as of December 31, 2007 disclosed 1,428 accounts totaling \$118,509 that had been in default over 90 days and should be forwarded to the Clerk-Magistrate's Office for further processing. The trial balance also showed 170 restitution accounts totaling \$67,747 that should be sent to the State Treasurer as abandoned property. All of these accounts go back a number of years, the oldest activity occurring in April 1981.

3. IMPROVEMENTS NEEDED IN PROCESSING OF UNCLAIMED, FORFEITED, AND DEFAULTED BAIL AND UNCLAIMED SMALL CLAIMS CASE BOND DEPOSITS **8**

Our review of DD's administration of bail disclosed that DD is not processing bail in accordance with the policies and procedures established by AOTC and is not complying with Massachusetts General Laws regarding the prompt transfer of abandoned, forfeited, and defaulted bail. We also noted a number of small claims case bond deposits that appear to be abandoned property. As a result, we estimate that DD is holding at least \$147,605 of abandoned and defaulted bail and \$14,200 of abandoned small claims deposits. When we brought this matter to the Clerk-Magistrate's attention, office personnel conducted a review and transferred a substantial portion of the identified items to the State Treasurer.

INTRODUCTION

Background

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a central administrative office managed by a Chief Administrative Justice (CAJ), who is also responsible for the overall management of the Trial Court. The CAJ charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and automation.

Chapter 211B of the Massachusetts General Laws authorized the Boston Municipal Court Department (BMC), which has civil jurisdiction over money-damage cases involving tort and contract actions; small claims; summary process; civil motor vehicle infractions (CMVI); mental health commitments; and domestic abuse actions. Its criminal jurisdiction includes most criminal offenses that do not require the imposition of a state prison sentence. The BMC consists of eight divisions, each having a specific territorial jurisdiction, to preside over the civil and criminal matters that are brought before it. The Division's organizational structure consists of three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office, headed by a Chief Probation Officer. The First Justice is the administrative head of the Division and is responsible for preparing the Division's budget and accounting for its revenues; however, the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Dorchester Division (DD) of the Boston Municipal Court Department presides over civil and criminal matters falling within its territorial jurisdiction of the community of Dorchester. During the period July 1, 2006 to December 31, 2007, DD collected revenues of \$2,778,245 and disbursed them to the Commonwealth and the community of Dorchester. The majority (approximately 99%) of revenue collected by DD was paid to the Commonwealth as either general or specific state revenue, totaling \$2,762,159, as follows:

Revenue Type	Amount
General Revenue	\$1,470,979
Probation Fees	552,325
Legal Counsel Fees	368,406
Victim Witness Fund	110,269
Civil Surcharges	101,585
Indigent Defense Fees	81,495
Head Injury Program	29,825
Alcohol Fees	24,140
Drug Analysis Fund	13,150
Victims of Drunk Driving Fund	5,465
Counsel Indigent Salary Enhancement Fund	3,720
Highway Fund	780
Miscellaneous	20
Total	<u>\$2,762,159</u>

Both the Clerk-Magistrate's Office and Probation Office processed receipts and disbursements from July 1, 2006 to December 31, 2007. During this time, approximately \$787,939 of those funds consisted of suspended fines and court costs that were collected by the Probation Office and submitted to the Clerk-Magistrate's Office for transmittal to the Commonwealth. During the same period, the Probation Office collected approximately \$298,603 of restitution money and paid \$236,552 directly to the victims.

In addition to processing civil case-entry fees and monetary fee assessments on criminal cases, DD was custodian of approximately 2,586 bails amounting to \$1,591,204 as of December 31, 2007. Bail in cash (DD does not accept non-cash forms of bail) is the security given to the court by defendants or their sureties to obtain release and to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release. In addition, DD was the custodian of 168 small claims appeal deposits totaling \$16,800 as of December 31, 2007.

The DD is responsible for conducting civil motor vehicle infraction (CMVI) hearings, which are requested by the alleged violator and heard by a Clerk-Magistrate or Judge who determines whether the driver is responsible for the CMVI offenses cited. DD does not collect the associated monetary assessment when a violator is found responsible, but is required to submit the results of the hearing to the Registry of Motor Vehicles, which follows up on collections.

DD operations were funded by appropriations either under the control of the Division (local), the Administrative Office of the Trial Court (AOTC), or the Office of the Commissioner of Probation (central).

Under local control was an appropriation for personnel-related expenses of the Clerk-Magistrate's Office and Judge's Lobby support staff, and certain administrative expenses (supplies, periodicals, law books, etc.) Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations. According to the Commonwealth's records, local and certain central appropriation expenditures associated with the operation of the Division for the period of July 1, 2006 to December 31, 2007 totaled \$3,674,295.¹

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls of the DD. The scope of our audit included DD's controls over operational activities, including cash management, bail funds, and criminal and civil-case activity, for the period July 1, 2006 to December 31, 2007.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of DD's internal controls over cash management, bail funds, and civil and criminal case activity; and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding DD's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and BMC policies and procedures.

Our review centered on the activities and operations of DD's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed bail and related criminal-case activity. We also reviewed cash management activity and transactions involving criminal monetary assessments and civil case entry fees, to determine whether policies and procedures were being followed.

¹ This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses, as well as personnel costs attributable to judges, court officers, security officers, and probation staff, and related administrative expenses of the probation office, since they are not identified by court division in the Commonwealth's accounting system.

To achieve our audit objectives, we conducted interviews with management and staff and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and DD's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. Our assessment of internal controls over financial and management activities at DD was based on those interviews and the review of documents.

Our recommendations are intended to assist DD in developing, implementing, or improving internal controls and overall financial and administrative operations to ensure that DD's systems covering cash management, bail funds, and criminal and civil case activity operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we determined that, except for the issues noted in the Audit Results section of the report, DD (1) maintained adequate internal controls over cash management, bail funds, and civil and criminal case activity; (2) properly recorded, collected, deposited, and accounted for all receipts; and (3) complied with applicable laws, rules, regulations for the areas tested.

After concluding audit fieldwork, a draft copy of this report was provided to DD officials for their review and response; however, DD officials chose not to provide a written response.

AUDIT RESULTS

1. IMPROVEMENTS NEEDED IN DEVELOPING AN INTERNAL CONTROL PLAN AND CONDUCTING PERIODIC RISK ASSESSMENTS

Our review of internal controls at the Dorchester Division (DD) of the Boston Municipal Court Department (BMC) found that DD had an internal control plan but additional work is needed so that the plan complies with state law and the Administrative Office of the Trial Court's (AOTC) rules and regulations. The DD prepared internal control documents that outline overall internal control procedures and concepts; however, the DD did not fully document its risk assessment, which would be used to determine what internal control procedures are needed to minimize the identified risks. As a result, AOTC's efforts to ensure the integrity of its records and assets were not optimized.

Chapter 647 of the Acts of 1989, *An Act Relative to Improving the Internal Controls within State Agencies*, states, in part: "Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the Office of the Comptroller." Subsequent to the passage of Chapter 647, the Office of the State Comptroller (OSC) issued written guidance in the form of the Internal Control Guide for Managers and the Internal Control Guide for Departments, which require that each department's internal control plan be unique and contain five components: risk assessment, control environment, information and communication, control activities, and monitoring. A revised Commonwealth Internal Control Guide subsequently replaced these internal control guides by streamlining what was contained in the previous guides, and incorporating other internal control principles. The OSC again stressed the importance of internal controls and the need for departments to develop internal control plans, defined as follows:

An internal control plan is a description of how a department expects to meet its various goals and objectives by using policies and procedures to minimize risk. The Commonwealth has defined the internal control plan to be a high-level summary supported by lower level policy and procedures.

Accordingly, AOTC issued Internal Control Guidelines for the Trial Court, establishing the following requirement for department heads when developing an internal control plan, including the following important internal control concepts:

[The internal control plan] must be documented in writing and readily available for inspection by both the Office of the State Auditor and the AOTC Fiscal Affairs department, Internal Audit Staff. The plan should be developed for the fiscal, administrative and programmatic operations of a department, division or office. It must explain the flow of documents or procedures within the plan and its procedures cannot conflict with the Trial Court Internal Control Guidelines. All affected court personnel must be aware of the plan and/or be given copies of the section(s) pertaining to their area(s) of assignment or responsibility.

The key concepts that provide the necessary foundation for an effective Trial Court Control System must include: risk assessments; documentation of an internal control plan; segregation of duties; supervision of assigned work; transaction documentation; transaction authorization; controlled access to resources; and reporting unaccounted variances, losses, shortages, or theft of funds or property.

In addition to the Internal Control Guidelines, Fiscal Systems Manual, and Personnel Policies and Procedures Manual, AOTC has issued additional internal control guidance (administrative bulletins, directives, and memorandums) in an effort to promote effective internal controls in court divisions and offices.

DD's internal control plan does not fully document risk assessments for the court's functions, which would determine the specific internal control activities needed to minimize identified risks. Additionally, the plan is not supported with detailed written procedures that communicate to employees what has to be done and by whom so that established policies get implemented and thereby facilitate the monitoring of the system. However, discussions with DD officials disclosed that they are aware of the limitations of the current plan and are in the process of developing an internal control plan that meets the OSC and AOTC guidelines.

Recommendation

The DD, in its revised internal control plan, should identify the risks associated with each transaction cycle or area requiring controls and then document the information system and the control and monitoring activities associated with that cycle or event. The DD should describe the accounting and information systems and more closely identify the control and monitoring activities associated with these systems and identified risks. The DD should distribute detailed procedures for implementation of these systems to relevant employees and thereby facilitate implementation and monitoring of its internal control system. Moreover, the DD should conduct annual risk assessments and update its internal control plans based on the results of these risk assessments as necessary.

2. IMPROVEMENTS NEEDED IN MONTHLY REVIEW OF PROBATION OFFICE'S DETAIL (LONG) TRIAL BALANCE

Our review of the Probation Office's detail Long Trial Balance (LTB) totaling \$240,411 as of December 31, 2007 disclosed 1,428 accounts totaling \$118,509 that had been in default over 90 days and should be forwarded to the Clerk-Magistrate's Office for further processing. The trial balance also showed 170 restitution accounts totaling \$67,747 that should be sent to the State Treasurer as abandoned property. All of these accounts go back a number of years, the oldest activity occurring in April 1981.

Section 12.5 of the Fiscal Systems Manual indicates that the Probation Office bookkeeper should review open accounts at the end of each month, and for accounts in default for 90 days or more, disburse the funds to the Clerk-Magistrate's Office. The following table shows the categories that should be forwarded to the Clerk-Magistrate's Office for processing to the Commonwealth.

Revenue Type	Amount
Court Costs	\$ 42,577
Fines	27,353
Attorney Fees	34,945
Victim Witness Fees	8,914
Drug Analysis	1,705
Miscellaneous	<u>3,015</u>
Total	<u>\$118,509</u>

We asked the accountant why the LTB was not reviewed on a monthly basis for old and defaulted accounts and were told that it was a problem of not being able to put sufficient time aside to review the LTB due to more immediate issues that needed attention as well as difficulties in producing the LTB.

As a result of the Probation Office (PO) not following the requirements of the Fiscal Systems Manual by systematically reviewing the LTB and remitting partial payments on accounts in default to the Clerk-Magistrate, defendants' accounts are not kept up-to-date and the State Treasurer does not have use of the funds.

With respect to the restitution accounts, our examination of the LTB also disclosed that the court was holding \$67,747 in unclaimed restitution; the accounts of which were over one year old and presumed to be abandoned property. The balance consisted of 170 accounts dating

back to a last payment date of July 1983. The court-ordered restitution was originally paid by defendants for disbursement to their victims. According to the Probation Office accountant, these restitutions were disbursed to the intended victims; however, most were returned because the addressees (victims) were not at the addresses of record. It should also be noted that the PO's bank had purged a number of checks totaling \$25,231 that had been outstanding over the years. Most of these purged checks (83%) were for restitution accounts. The funds were properly restored to the accounts by the PO, but further processing was not done. The accountant added that further attempts were made to track down the victims, but all were unsuccessful and the monies therefore remained in the custody of DD.

In accordance with Massachusetts General Laws, Chapter 276, Section 93, unclaimed money collected by probation officers should be paid to the State Treasurer, as follows:

...money collected by a probation officer under order of the court by which he is appointed, if unclaimed after one year from the time of its collection, shall, upon further order of the court, be paid to the treasurer provided, that any part of the said money may be paid to persons establishing before the comptroller a lawful claim thereto within five years of its payment to said treasurer, unless sooner paid over by order of the said commissioners.

As a result of not processing unclaimed restitution accounts and unpaid checks, the State Treasurer does not have knowledge of these funds and cannot proceed with advertising this abandoned property.

Recommendation

The DD should adhere to the requirements stipulated in Section 12.5 of the Fiscal Systems Manual and examine the LTB at the end of each month to determine the categories and amounts of money remaining in open accounts and process them as follows: (1) disburse partial payments in default for over 90 days to the Clerk Magistrate, (2) remit restitution that remains unclaimed for over one year to the State Treasurer, and (3) remit bank-purged checks (checks over one year old and presumed abandoned) to the State Treasurer.

3. IMPROVEMENTS NEEDED IN PROCESSING OF UNCLAIMED, FORFEITED, AND DEFAULTED BAIL AND UNCLAIMED SMALL CLAIMS CASE BOND DEPOSITS

Our review of DD's administration of bail disclosed that DD was not processing bail in accordance with the policies and procedures established by AOTC, and, as a result, is not in

compliance with the Massachusetts General Laws regarding the prompt transfer of abandoned and forfeited bail amounts to the State Treasurer. Our review also found that DD does not notify defendants or sureties that their bails are eligible for collection. AOTC requires courts to send written reminders to defendants and sureties one year after the authorized release date of their bails. Further, we noted a number of old unclaimed small claims case bonds on hand that should be transmitted to the State Treasurer. As a result, DD is holding an estimated \$147,605 in abandoned and defaulted bail funds and \$14,200 in abandoned small claims case bonds that should be transmitted to the State Treasurer. When we brought this matter to the attention of the Clerk-Magistrate, office personnel conducted a review of the accounts and transmitted a substantial portion to the State Treasurer in September 2008.

As of December 31, 2007, DD's detailed trial balance reported 2,586 cash bails on hand totaling \$1,591,204 and 168 small claim deposits totaling \$16,800.

The following tables present a summary of the bail and small claim deposits on hand, aged on the basis of the last date a payment was received:

Bails

Year(s)	Number of Accounts	Amount
1986-2004	488	\$ 147,605
2005	370	124,180
2006	483	255,189
2007	<u>1,245</u>	<u>1,064,230</u>
Totals	<u>2,586</u>	<u>\$1,591,204</u>

Small Claim Deposits

Year(s)	Number of Accounts	Amount
1990-1994	41	\$ 4,100
1995-1999	63	6,300
2000-2004	38	3,800
2005-2007	<u>26</u>	<u>2,600</u>
Totals	<u>168</u>	<u>\$16,800</u>

Based on the above aging, there are potentially 488 bails representing abandoned and forfeited bail totaling \$147,605 that should be remitted to the State Treasurer. Also, we estimated that 142 small claim deposits totaling \$14,200 and presumed abandoned should be remitted to the State Treasurer.

Sections 9.2 and 9.6 of AOTC's Fiscal Systems Manual describe procedures for processing old bails and define unclaimed bail as bail that has not been requested by its defendant or surety within one year after the authorized release date. Bail that remains unclaimed for three years after the release date is presumed abandoned property and should be transmitted to the State Treasurer in accordance with Massachusetts General Law, Chapter 200A, Section 6. Unclaimed small claims case bond deposits are also treated as abandoned property in accordance with the Fiscal Systems Manual.

With respect to Abandoned Property, Chapter 200A, Section 6 of the General Laws states:

Monies paid into any court within the commonwealth for distribution, and the increments thereof, shall be presumed abandoned if not claimed within three years after the date of payment into court, or as soon after the three year period as all claims filed in connection with it have been disallowed or settled by the court.

Forfeited bail is described in Section 9.2 of the Fiscal Systems Manual as "bail which a judge declares a defendant or surety has lost or surrendered to the Commonwealth in open Court, usually as a result of the defendant defaulting for failing to appear." Section 9.6 indicates that forfeited bail must be sent to the State Treasurer as General Fund Revenue by the tenth day of the following month of forfeiture.

When defendants do not appear in court in accordance with the terms of their release on bail, courts are authorized to forfeit bail under Chapter 276, Section 80, of the General Laws, which states:

At any time after default of the defendant, the court may order forfeited the money, bonds or bank books deposited at the time of the recognizance and the court or clerk of the court with whom the deposit was made shall thereupon pay to the state treasurer any money so deposited.

As part of our audit, we performed a detailed review of 31 bail case files and found that:

- Two cases were found in default for over three years, but the court had not issued forfeiture orders, which would allow the bail amounts to be sent to the State Treasurer as general revenue.
- Three cases were ordered forfeited, but the amounts had not been sent to the State Treasurer as general fund revenue.

- 10 cases over three years old and presumed abandoned had not been sent to the State Treasurer.
- 13 cases were over one year old and dismissed but did not have letters in the files advising either the defendant or surety to collect the bail due.
- 12 of the 31 bails originally took more than two days to reach the court, and the range in transit days was between two and 12 days.

Since the DD did not follow the requirements of AOTC's Fiscal Systems Manual for the proper administration of unclaimed and forfeited bail, including notification in writing to the owners of unclaimed bail that their bails were eligible for release, the court improperly held property that was rightfully due to others or the State Treasurer.

We asked the Clerk-Magistrate why the office has not been processing unclaimed and forfeited bail and why the trial balance has not been maintained in a current status. He explained that the backlog of bails has existed because the office is shorthanded, with only one bookkeeper and a back-up assistant who helps her only intermittently because he is also a back-up Cashier. With the bookkeeper constantly busy with having to attend to the day-to-day activities, there remains little time to devote to the extensive bail inventory. However, after advising the Clerk-Magistrate of the problems in bail, he stated that he would endeavor to begin processing old bails and send forfeited and abandoned bails to the State Treasurer. Additionally, he stated that he would send letters to owners reminding them of their unclaimed bail.

As a result of the Clerk-Magistrate's review, the office transmitted a number of bail and bond accounts to the State Treasurer. As of completion of our audit fieldwork on September 30, 2008, the following had been transmitted:

- \$103,528 of bail forfeitures (\$19,360 of those were bails for cases that had been in default between the period 1990 to 2004).
- \$26,880 of abandoned bails for cases completed between 1990 and 2004.
- \$5,100 of abandoned small claim deposits received between 1990 and 2004.

Also, as a result of the review, the Clerk Magistrate had mailed numerous reminder notifications to owners of bails and small claim deposits that their monies were available for return to them.

Recommendation

The Clerk-Magistrate should continue to pursue the processing of unclaimed and forfeited bail in accordance with the provisions of the Fiscal Systems Manual and the Massachusetts General Laws for abandoned and forfeited bails. Thereafter, the Clerk-Magistrate should conduct systematic reviews of the bail and small claim deposits on hand and maintain the trial balances in a current status.