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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DAVID R. GIBSON, ROBERT V.A. HARRA, JR. KEVYN N. RAKOWSKI, and WILLIAM B. NORTH Defendants.	15 Civ. ( ) COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC" or "Commission"), for its Complaint against Defendants David R. Gibson ("Gibson"), Robert V.A. Harra, Jr. ("Harra"), Kevyn N. Rakowski ("Rakowski") and William B. North ("North" and collectively "Defendants"), alleges as follows:

SUMMARY

1. This is a Commission enforcement action charging fraud and other federal securities law violations against Defendants – former officers of Wilmington Trust Corporation ("Wilmington Trust" or the "Bank"), the former public holding company for Wilmington Trust Company, a retail and commercial bank headquartered in Wilmington, Delaware. From the third quarter of 2009 through the second quarter of 2010, the four Defendants – then Chief Financial

Officer Gibson, Chief Operating Officer and Bank President Harra, Controller Rakowski, and Chief Credit Officer North – knowingly made, and/or substantially participated in making, material false disclosures concerning the Bank's accruing loans 90 days or more past due – a key credit quality metric.

2. By mid-2009, after years of record loan growth, Wilmington Trust had loan balances of over $9 billion, with a concentration in Delaware real estate-related loans. During this period, the Bank's loan administration and monitoring was poor, particularly regarding its Delaware portfolio. As the housing market slowed, many of the construction projects underlying the Bank's loans stalled, and an increasing volume of the loans matured – *i.e.*, the loan's term expired and the principal payment became due. The Bank did not classify most of these matured loans as "nonaccruing," meaning that the Bank continued "accruing" or recording as income the borrower's obligation for ongoing interest payments as if the Bank expected payment; nor did it extend those loans through new legal agreements with the borrower. Accordingly, by late 2009, the Bank held a significant amount of "accruing" but matured loans in its portfolios.

3. From the third quarter of 2009 through the second quarter of 2010, Gibson, Harra, Rakowski and North knowingly engaged in conduct that fraudulently misled investors concerning the extent of past due, matured and extended loans in the Bank's commercial loan portfolio. Defendants' conduct resulted in a series of materially false and misleading public disclosures in the Bank's public filings concerning the Bank's accruing loans 90 days or more past due, including disclosures that understated the amount of such loans by over $300 million.

4. Each of the Defendants knew the true state of the Bank's loan portfolio but knowingly engaged in conduct designed to hide the truth from investors. Gibson and Harra

made the misleading public statements, participated in deceptive conduct concerning the loans, and knew or recklessly disregarded the false and misleading effect of those practices on Wilmington Trust's financial statements and disclosures. Rakowski and North knowingly engaged in conduct critical to, and that they knew would result in, the misleading disclosures described above – which they knew would mislead investors concerning the extent of the Bank's past due, matured and extended loan portfolio.

5. In addition to the false disclosures and deceptive conduct concerning past due loans, in relation to SEC filings for the third quarter of 2009 and the fourth quarter of 2009, Gibson intentionally or recklessly caused the Bank to fail to disclose material information that the Bank had identified after quarter-end, but prior to the filing of its public reports. First, information concerning a significant increase in the Bank's nonaccruing loans for the third quarter of 2009 was not disclosed in the Bank's Form 10-Q filed with the SEC for the third quarter of 2009. Second, information concerning a material increase the Bank's allowance for loan losses (based on significant declines in commercial loan risk-ratings in the fourth quarter of 2009) was not disclosed in its Form 10-K for 2009. Generally accepted accounting principles ("GAAP") required the Bank to disclose these material changes in its public reports. Gibson signed the Bank's SEC filings knowing or recklessly disregarding that they did not disclose these material changes and, thus, that they were materially misleading.

VIOLATIONS

6. By virtue of the conduct alleged herein, each of the Defendants, directly or indirectly, singly or in concert, have engaged in transactions, acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities

Act"), 15 U.S.C. § 77q(a), and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5 and 13b2-1 thereunder, 17 C.F.R. § 240.10b-5 and 240.13b2-1; Rakowski and North, directly or indirectly, singly or in concert, have aided and abetted Gibson's and Harra's violations of Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder; Gibson, directly or indirectly, singly or in concert, has violated Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14; and, each of the Defendants, directly or indirectly, singly or in concert, have aided and abetted violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act,15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13.

7. Unless the Defendants are permanently restrained and enjoined, they each will again engage in the acts, practices, transactions and courses of business set forth in this Complaint and in acts, practices, transactions and courses of business of similar type and object.

8. For these violations, the Commission seeks a judgment against all four Defendants ordering injunctive relief, disgorgement, civil penalties, officer and director bars (against Gibson and Harra), and any other appropriate and necessary relief.

NATURE OF THE PROCEEDING AND RELIEF SOUGHT

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. §§ 77t(b), and Sections 21(d) of the Exchange Act, 15 U.S.C. §§ 78u(d), seeking a final judgment: (a) permanently restraining and enjoining Defendants from engaging in the acts, practices and courses of business alleged herein; (b) requiring Defendants to disgorge ill-gotten gains and to pay prejudgment interest thereon; (c)

imposing civil money penalties on Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3); and (d) barring Gibson and Harra, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from serving or acting as officers or directors of any issuer that has a class of securities registered under Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Venue is proper because some of the acts, practices, courses of business and transactions constituting the violations alleged herein occurred within the District of Delaware, where Wilmington Trust was headquartered and where all of the Defendants were employed.

12. Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of a facility of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein.

DEFENDANTS

13. **Gibson**, age 58, was the Chief Financial Officer of Wilmington Trust from 2002 until July 2011. Gibson resides in Wilmington, DE.

14. **Harra**, age 66, was Wilmington Trust's President from 1996 through May 2011, and Chief Operating Officer from 1996 through November 2010. He resides in Wilmington, DE.

15. **Rakowski**, age 61, was Wilmington Trust's Controller from 2006 until 2011. At all relevant times, Rakowski was a registered Certified Public Accountant licensed in Pennsylvania. She resides in Lakewood Ranch, FL.

16. **North**, age 55, served as the Chief Credit Officer for Wilmington from 2004 until his resignation in late July 2010. He resides in Bryn Mawr, PA.

ISSUER

17. **Wilmington Trust** was, during all relevant periods, a bank holding company based in Wilmington, Delaware incorporated under the laws of the State of Delaware. Its securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its common stock traded on the New York Stock Exchange under the symbol "WL." Wilmington Trust Company was, during the relevant period, a Delaware-chartered bank and trust company and wholly-owned subsidiary of Wilmington Trust.

18. Wilmington Trust filed a Form S-3ASR with the Commission on November 29, 2007, which was amended by a post-effective amendment in a January 12, 2009 Prospectus that specifically incorporated any future SEC filings under Exchange Act Sections 13(a), 13(c), 14, or 15(d). On February 25, 2010, the Bank filed a final Prospectus Supplement on Form 424B, offering 18,875,000 shares of common stock and incorporating by reference its Form 10-K for

the year ended 2009. The Bank sold 21,706,250 shares of common stock at $13.25 per share and raised $287.7 million ($274.0 million, net of discounts and commissions). The public offering was made to shareholders located in various states.

19. On May 16, 2011, the Bank was acquired by a New York-based bank holding company in a stock-for-stock transaction, and Wilmington Trust's securities were removed from registration. Wilmington Trust and Wilmington Trust Company both survive as wholly-owned subsidiaries of that bank holding company.

FACTS

I. The Past Due and Extended Loan Scheme

A. Background

20. During the credit crisis that began in 2008, many commercial banks were in distress caused by declining home values, increasing loan nonperformance, loan delinquencies, and loan losses. In accordance with GAAP, Wilmington Trust was required to disclose certain information concerning the Bank's loans, including the balances of loans on its books that were "nonaccruing" – *i.e.*, loans for which the Bank was no longer accruing interest into income because the Bank concluded that it was unlikely to be able to collect the interest or principal on the loan. It was also required to disclose balances of loans that were past due 90 days or more that were "accruing" – *i.e.*, loans for which the Bank was still accruing the borrower's obligation to pay interest into income despite the past due status, because the Bank had not yet concluded that it was unlikely to be able to collect the interest or principal on the loan.

21. The Defendants knew that, due to the economic environment at the time, investors, analysts and regulators were closely scrutinizing banks' public reporting and analysis

of information related to past due and extended loans, because such loans have a high potential to lead to financial losses.

22. In each of the Bank's SEC filings from the third quarter of 2009 through the second quarter of 2010, the Bank purported to disclose its outstanding balance of accruing loans 90 days or more past due.

23. A "matured" loan is a loan that has reached the end of its term without its principal being paid off or its term renewed or extended. Matured loans are past due as long as principal remains owing. The Bank's lending policy required that extensions of matured loans be documented by a Change In Terms Agreement ("CITA") signed by the Bank and the borrower. Regardless of whether interest payments were delinquent, matured loans were classified as delinquent, or past due, in the Bank's computerized loan accounting and loan officer management systems until the Bank recorded a fully executed CITA.

24. Notwithstanding the Bank's lending policy, Gibson, Harra, Rakowski and North and others maintained a practice of omitting – or "waiving" – past due loans that were not delinquent for interest but that were matured 90 days or more, and thus past due for principal, from its public disclosures of accruing loans past due 90 days or more.

25. The Bank did not have – and the Defendants did not institute – any internal controls or written policies or procedures to govern its past due reporting process or its waiver practice.

26. The Defendants knew that the waiver practice was inappropriate, but they maintained it even as the economic crisis deepened, despite knowing that the Bank came to have an exceedingly high volume of matured loans, and despite knowing that omitting past due loans

from reporting had the effect of falsely and misleadingly making the Bank's loan portfolios appear to the public to have less potential for deterioration than they actually did.

B. Third Quarter 2009 Disclosures

27. During the third quarter of 2009, Gibson, Harra and North knew that the number of matured loans in the Bank's portfolio had grown significantly, and that many of these matured loans had been mature for multiple quarters.

28. As Chief Credit Officer, North received a draft report of delinquent commercial loans (the "Delinquency Report") at the end of each quarter, which North was responsible for reviewing, finalizing and approving. Defendants knew that, per the Bank's unwritten waiver practice, North, or a staff member that reported to him, would mark as "waived" in the Delinquency Report – that is, mark for omission from the Bank's public reporting of its past due loans – hundreds of millions of dollars in matured, interest current, loan balances.

29. On or about October 7, 2009, North approved a Delinquency Report that marked for waiver approximately $351 million in matured, interest current, loan balances that were past due 90 days or more. Defendants knew that the information contained in the approved Delinquency Report would be incorporated in the Bank's consolidated Past Due and NonPerforming Loans Report ("PDNP Report"), after removal of all loans marked to be waived. Defendants also knew that the Bank would use the resulting loan balances in the PDNP Report as the basis for its disclosures of past due and non-performing loans in its public reporting, including in its SEC filings. Defendants also knew, or recklessly disregarded, that the waiver practice was not, and would not be, disclosed to investors.

30. As Controller, Rakowski was responsible for preparing the Bank's consolidated PDNP Report, using North's Delinquency Report and similar reports from other areas of the Bank. On or about October 7, 2009, North's staff forwarded the approved Delinquency Report for the third quarter 2009 to Rakowski's staff for this purpose. The Delinquency Report Rakowski's staff received included a column identifying the loans to be "waived" from public reporting.

31. As Defendants knew they would, Rakowski's staff omitted from the PDNP Report all loans marked as waived on the Delinquency Report. Having omitted the $351 million in waived loans, the PDNP Report indicated that the Bank would report only $38.7 million in accruing loans past due 90 days or more for the quarter. On or about October 14, 2009, Rakowski's staff circulated the PDNP Report to the Bank's senior management, including Gibson, Harra, Rakowski and North.

32. As described in paragraph 39 below, no later than October 28, 2009, Rakowski learned the exact volume of waived matured loans that would be omitted from the Bank's Form 10-Q for the third quarter of 2009.

33. On October 23, 2009, the Bank issued its third quarter earnings release and filed its Form 8-K for the third quarter of 2009 (which incorporated the earnings release by reference and attached it). Gibson, Harra and Rakowski approved the third quarter earnings release; the Bank's CEO signed the Form 8-K. The earnings release disclosed only $38.7 million in accruing loans past due 90 days or more, thus understating the Bank's past due loans by the $351 million that had been waived.

34. On October 21, 2009, Harra and other members of the Bank's Board of Directors signed a Memorandum of Understanding ("MOU") with Wilmington Trust's primary banking regulator, the Federal Reserve Bank of Philadelphia ("FRB"). Among other requirements, the Bank agreed to provide more frequent and more in-depth reporting to the FRB concerning loans "past due as to principal or interest more than 90 days." Gibson, Rakowski and North also were aware of the new requirements at or around the time the Bank executed the MOU. Thus, the Defendants were aware, no later than October 21, 2009, that the Bank's portfolio of loans that were past due as to principal – *i.e.*, matured – more than 90 days would be exposed to the scrutiny of its bank regulators.

35. At or about this time, prior to the filing of the Bank's Form 10-Q for the third quarter of 2009, senior management – including the Bank's CEO, Gibson, Harra, Rakowski and North – acknowledged internally that the Bank's matured loan problem had reached such a magnitude, and was likely to face scrutiny from regulators and auditors, that it urgently needed to be addressed. Accordingly, they initiated several steps, discussed in paragraphs 36 - 38 and 47 - 48 below, to begin phasing out the practice of waiving matured loans from reporting, and to attempt to have such loans extended by year end.

36. On October 26, 2009, Harra emailed the Bank's regional senior managers of commercial lending (the "Market Managers"), instructing them to focus on monthly management of delinquent commercial loans, including matured loans and extensions, describing them as "critical issues to me and I cannot over-emphasize their importance to the company." Gibson also became focused on the matured loan problem during this time period.

37. Harra instructed his direct report, the Mid-Atlantic Market COO, to manage the process of addressing the Bank's matured loan problem. With Harra's knowledge, North and the Mid-Atlantic Market COO together took steps to attempt to have all matured loans extended by year end. The plan, however, contemplated continuing to waive matured, interest-current loans until January 1, 2010 to the extent that loan extensions were not accomplished prior to year end.

38. Loan extensions for matured loans in this extension push were expected to include CITAs, as required by Bank policy. The Bank's management initially contemplated that matured loans would undergo a new underwriting process, accompanied by current collateral valuations and borrower financial information, which would likely lead to the Bank imposing new or additional terms on the borrower in exchange for an extension of the maturity date. The Bank's senior management, including Harra and North, recognized that temporary or short-term extensions (*i.e.*, extensions of 120 days or less) would not solve the Bank's matured loan problem, because such extensions would not reflect the long-term prospects for the loan, and they would mature again quickly.

39. On or about October 28, Rakowski requested that her subordinate, the Bank's manager of financial reporting, provide her with the amount of matured loans that were 90 days or more past due but waived from the third quarter past due reporting. The manager obtained the information from North's Credit Policy Manager, and forwarded it to Rakowski.

40. The Bank filed its Form 10-Q for the third quarter of 2009 on November 9, 2009, disclosing the same understated past due amounts that it disclosed in its October 2009 earnings release. Accordingly, the Bank's Form 10-Q understated by at least $351 million its balance of loans past due 90 days or more and still accruing.

41. The Bank maintained an internal risk rating system designed to systematically and objectively categorize credit risk in the Bank's loan portfolio according to defined quality and risk attributes. Risk rating categories were assigned to individual loans at their inception and could be changed upon formal credit review or at any time the Bank received information about factors that could affect credit quality. The major risk rating categories were "pass" and "criticized." Pass loans were those with "no current or potential problems." Among the "criticized" classifications, loans were classified as "substandard" only when they had "well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the Bank will sustain some loss if the deficiencies are not corrected." The Bank maintained two separate classifications for substandard loans: "substandard-accruing" loans, which the Bank did not consider impaired, and "substandard-nonaccruing" loans, which were considered impaired according to the Bank's policy. According to the Bank's policy, a loan was considered impaired "when it is probable that the borrower will be unable to pay all amounts due according to the contractual terms of the loan agreement." A determination that a loan is impaired requires, pursuant to GAAP, further analysis to assess whether the Bank needs to establish a reserve against potential loss.

42. A material portion of the Bank's undisclosed accruing past due loans had elevated credit risks, as reflected by the previously assigned credit risk ratings. Prior to its earnings release and Form 10-Q filing, the Bank classified $131.5 million of the undisclosed past due loans with risk ratings below "pass," including $67.7 million that it rated "substandard-accruing."

43. At the time the Bank filed its Form 10-Q for the third quarter of 2009, Rakowski and North knew, and Gibson knew or was reckless in disregarding, that it contained material false statements and omissions concerning the amount of the Bank's loans that were accruing but past due 90 days or more.

44. Gibson signed and certified the Bank's third quarter 2009 Form 10-Q as CFO; Gibson and Rakowski both participated in its drafting; and both approved the Form 10-Q prior to filing. Gibson and Rakowski were charged with ensuring the accuracy and completeness of the Form 10-Q – as well as the Bank's other SEC filings – as part of their job responsibilities.

45. In addition, both Gibson and Rakowski were members of the Bank's Disclosure Committee, the management committee responsible for ensuring that the Bank's public disclosures were accurate and complete, and that they contained no material misstatements or omissions. The Disclosure Committee was also responsible for ensuring that the Bank's internal controls over financial reporting would result in reliable public financial reporting in accordance with GAAP.

46. Harra and North also had obligations to help ensure the integrity of public disclosures. Each of them signed a quarterly subcertification of the Bank's results for the third quarter of 2009 through the second quarter of 2010, attesting that they were not aware of any issues in their areas of responsibility "that could materially impact the integrity or reliability of the information the Corporation uses in preparing its financial statements" or of "any deficiency in financial reporting or internal controls in other Departments that could result in a material misrepresentation in the Corporation's financial condition or results of operations," and that these subcertifications would be used to support Gibson and the Bank's CEO's own

certifications of the Bank's SEC filings. Rakowski signed similar subcertifications for the same periods.

C. Fourth Quarter and Year Ended 2009 Disclosures

47. During the second half of the fourth quarter of 2009, Harra and North continued efforts to address the Bank's high volume of matured loans. The initial goal was to put each matured loan through a full extension review by year end, with required documentation, underwriting and negotiation, resulting in a fully-executed CITA documenting each loan extension. However, Harra and North eventually realized that full reviews could not be accomplished by year end. Instead, with Harra's knowledge, approval and encouragement, North supervised and, along with the Mid-Atlantic Market COO and the Bank's Senior Commercial Real Estate Credit Officer, implemented an abbreviated process to "internally approve" – *i.e.*, authorize, but not complete – short-term extensions of matured loans by year end. This included authorizing temporary or other short-term extensions of loans that the Bank could not, or did not want to, extend for longer terms due to the borrower's financial condition, lack of updated appraisals, financial documentation, appropriate underwriting and/or adequate negotiation for long-term renewals. A significant amount of these loans were "internally approved" for extension, but the Bank failed to take further steps no extension documentation was actually executed with the borrowers. Thus, these loans remained matured, and therefore past due, at year end.

48. Through this process, North authorized almost all of the Bank's matured loans to be extended, despite knowing that they were exhibiting signs of instability. Harra was a member of the Bank's Loan Committee and, thus, received copies of the loan officers' requests to

authorize extensions. The requests contained information concerning the status of the loans, often including reasons why the Bank could not, or would not, extend them for a longer period by year end. Harra and North also received updates – from the Mid-Atlantic Market COO, the Bank's Delaware Market Manager and others – concerning the attempts of the Delaware commercial real estate ("CRE") loan officers to extend their large volume of matured loans.

49. In mid-November 2009, North emailed Gibson and proposed to continue to waive from public reporting matured loans that were in workout (*i.e.*, loans that were rated "substandard" or worse), which the Bank had no intention of extending. Gibson sought Rakowski's input, and she agreed to North's proposal.

50. Shortly after this exchange, Rakowski forwarded to Gibson a monthly internal Delinquency Report for October 2009, to be used in preparing a monthly report for the FRB, with a note from her staff member explaining which loans were omitted from the Delinquency Report: "Loans with "Y" in the Waive columns [are] not included in our final number." Rakowski noted to Gibson: "We did pull the waived loans from the [PDNP] report…Have not had time to look at this... Numbers for October still seem [high]." This Delinquency Report was identical in format to Delinquency Reports used as a basis for the Bank's quarterly PDNP Reports and, accordingly, it included the maturity date of each loan, number of days past due, the outstanding balance, the current risk rating of the loan, an indication of whether the loan should be waived, and the reason for the waiver. Thus, Gibson and Rakowski were fully aware of the Bank's continued waiver practice, including that Rakowski's staff continued to remove the waived loans from the Delinquency Report when preparing the PDNP Report, resulting in such loans not being included in the Bank's final past due disclosure.

51. Gibson and Rakowski also knew that the Bank was trying to extend a large volume of matured loans in an expedited fashion. In early December, they, along with Harra, North and others, received from the Bank's internal Audit Services department a memorandum detailing that department's concerns regarding the Bank's matured loans in relation to its nonaccrual policy, which noted that "[m]anagement needs to properly process and account for matured loans." The memorandum raised concerns regarding the risk ratings of matured loans that management claimed were "in the process of extension" but which Audit Services found were not actually being extended in a timely fashion. Management's response – submitted by the Mid-Atlantic Market COO – was that the "staff has been instructed that all loans [matured or maturing prior to December 31, 2009] must be extended, renewed and/or substantially underwritten with a Change in Terms Agreement in process by December 31, 2009." Neither the memorandum nor Management's Response mentioned waiving matured loans from public past due reporting.

52. By no later than mid-December 2009, North and Harra knew that the credit quality of the matured loans was likely deteriorating. Toward the end of the fourth quarter, North responded to an email from the Bank's CEO, which Harra was copied on, in which the CEO asked about certain of the proposed loan extensions. North replied that "more than a few" short-term loan extensions had been authorized because poor market conditions meant the Bank needed borrowers to pay down principal, or increase interest rates, before the Bank could execute long-term loan modifications. North replied that the Bank authorized the short-term extensions of these loans in order to resolve year-end maturity issues.

53. North removed the CEO from the email chain and replied solely to Harra that the Bank could not fully address the issues with many of the matured loans before year end because they were "credit turds." North continued: "We (and the economy) didn't make this mess overnight, and unfortunately we can't clean it all up in a short time frame either."

54. In recognition of the credit concerns in the large volume of matured loans, the Bank's mass extension initiative became related to a new Bank effort called the "Surge." Bank management initiated the Surge at year-end 2009 to facilitate review of the Delaware CRE loan portfolio – including its large volume of matured loans – which had not been monitored appropriately by the Bank.

55. Harra and North were aware of, and closely involved in, the Surge, which was considered a high priority project within the Bank. They were aware that the Surge was expected to address the matured loans and the material weaknesses inherent in the loans that were internally approved for temporary extensions without being appropriately evaluated, negotiated or modified. Gibson and Rakowski were also aware of the Surge by no later than mid-January 2010.

56. By no later than January 26, 2010, each of the Defendants knew that the Surge was revealing significant deterioration trends in the Bank's Delaware CRE loan portfolio.

57. On January 8, 2010, North approved the year-end 2009 Delinquency Report, which identified for waiver $330.2 million in matured loans that were 90 days or more past due. As North knew, in addition to their status as 90 or more days past due, a large number of these waived loans had significant deficiencies listed in the Delinquency Report. For example, over half of the balances – $177.3 million – were actually 180 or more days past due, and $98 million

in loans had risk ratings lower than "pass," including $53.2 million that were rated "substandard."

58. A few hours after North's approval, the Bank's Credit Risk Manager emailed Gibson, Rakowski and North (and others) the preliminary past due numbers from the year-end Delinquency Report. She included a table showing that only $11.3 million in commercial loans would be reported as past due 90 days or more for the fourth quarter of 2009, but that $330.2 million in matured commercial loans past due 90 days or more would be waived (and thus not publicly reported as past due). She stated in her email: "I want you to be sure you are aware of the continuing magnitude of the expired loans issue."

59. On January 11, 2010, in a separate email to Gibson, Harra, Rakowski and others, North referred to "the loans that are… in the 'waived' section" of the Credit Risk Manager's January 8, 2010 email, and reiterated the approach he had taken – with the understanding of the other Defendants – regarding matured loans marked as waived in the 2009 year-end Delinquency Report. North stated that, for purposes of fourth quarter and year-end 2009 reporting, they had decided "to no longer waive matured/interest current loans just because a renewal was 'in process.' What we said was that if the loan in question had been properly approved internally (documentation may not have been executed or input onto [the internal loan accounting system]) or was [a matured workout loan]… that we would waive those situations." In the same email chain, the Mid-Atlantic Market COO remarked that the process involved an "enormous number" of matured Delaware CRE loans. Thus, North acknowledged, and the other Defendants were aware, that the Bank was preparing to omit from its public reporting of accruing matured loans

past due 90 days or more a large number of such loans that had not been extended (*i.e.*, for which CITAs had not been obtained), and that remained past due.

60. In the same January 11, 2010 email, North further noted to Gibson, Harra, Rakowski and others that "we did a lot of extensions until 4/1/10 so as to allow for the proper/needed level of underwriting required on the CRE credits," which he noted would not be complete until the second quarter of 2010. In sum, North acknowledged, and the other Defendants were aware, that a large volume of the Bank's commercial real estate loans had been extended temporarily without appropriate underwriting, or authorized for temporary extensions that were not completed, and that this condition would exist for a least one quarter beyond the reporting period.

61. On or about January 21, 2010, based on the Delinquency Report that North had approved (and without adjustment to the loans marked to be waived), the Controller's group omitted $330.2 million in accruing matured loans past due 90 days or more from the final 2009 year-end PDNP Report.

62. On January 29, 2010, the Bank issued its year-end 2009 earnings release and Form 8-K, disclosing only $30.6 million in accruing loans 90 days or more past due. On February 22, 2010, the Bank issued its 2009 Form 10-K, disclosing accruing loans 90 days or more past due identical to the year-end earnings release. The Bank's year-end 2009 publicly filed Form 8-K and Form 10-K thus understated its accruing loans past due 90 days or more by $330.2 million.

63. At the time the Bank filed its 2009 Form 10-K, Gibson, Harra, Rakowski and North knew or recklessly disregarded that it contained material false statements and omissions concerning the amount of the Bank's accruing loans past due 90 days or more.

64. The Bank's public filings also carried forward the false past due loan amounts from prior periods, without disclosing that those numbers were based on a waiver practice that the Bank had materially changed (*i.e.*, in prior quarters, the Bank had omitted from its public disclosures all matured loans past due 90 days or more that were still accruing interest, regardless of whether the Bank had authorized (but not completed) loan extensions or had taken any other steps toward actually extending such loans).

65. Neither the year-end earnings release nor the Form 10-K contained any disclosures regarding the Bank's massive waiver of past due loans, the mass authorizations of extensions of its matured loan portfolio, or its credit concerns regarding both its waived and extended loans.

66. Gibson, Harra, Rakowski and North all received drafts of the year-end earnings release and the Form 10-K prior to their being finalized or filed. They were each requested to provide input on the drafts, including the sections containing the Bank's past due loan disclosures. North provided extensive comments to the draft MD&A section on Banking and Credit Risk. This section included the table disclosing past due loans. Rakowski approved the Bank's financial disclosures in its 2009 Form 10-K and year-end earnings release, and she was aware at that time that the Bank's waived loans had been omitted from these disclosures, and that that waiver resulted in material under-disclosure of the Bank's past due loans.

67. Gibson, as CFO, signed and certified the Bank's 2009 Form 10-K. Harra signed the Form 10-K in his capacity as President, COO and Wilmington Trust Board member. Gibson and Harra both signed the section of the Form 10-K concerning Management's Report on Internal Control Over Financial Reporting. Harra, North and Rakowski each signed a subcertification in a form similar to their third quarter 2009 certifications (described in paragraph 46 above).

68. In mid-January 2010, shortly before issuing its year-end 2009 earnings release, Gibson recommended to the Bank's CEO that the Bank attempt to raise additional capital by means of a public offering of common stock, despite widespread internal awareness of deep problems in the Bank's loan portfolios. Harra participated in some of these discussions, and knew about the public offering. Rakowski and North became aware of the public offering in mid-January 2010.

69. On February 22, 2010, the Bank announced its common stock offering. On February 25, 2010, the Bank filed with the SEC its final Prospectus Supplement for its stock offering. The Prospectus Supplement incorporated by reference the Bank's 2009 Form 10-K, and thus, as Gibson, Harra, Rakowski and North were aware, it contained materially false statements and omissions concerning the Bank's loans that were accruing but past due 90 days or more. Through the public offering, which closed on March 2, 2010, the Bank sold $287 million in common stock, netting $274 million after costs and commissions.

70. In February 2010, the Bank awarded Gibson stock options and approved salary increases for Gibson and Harra; Rakowski and North were awarded bonuses. These awards and salary increases were based on their performance in 2009.

D. First Quarter 2010 Disclosures

71. On March 24, 2010, North emailed Harra and the Bank's CEO to request a meeting concerning issues with the Bank's matured and maturing loan portfolio. He attached a memorandum describing the Bank's "looming issue" concerning its matured and maturing loans, principally in the Delaware CRE portfolio. He wrote: "As you might remember in December we extended a number of DE CRE loans to 4/1/10…While we've reviewed over $900MM of [outstanding loan balances] to date as part of the [Surge] project, a number of the [loans] reviewed have required additional follow up and meetings (internal and external) before we can even get to the point of laying out a renewal/extension structure that makes sense for us and the Borrower." North continued that there was "simply no way" that full loan reviews and analyses of all of the matured and maturing loans could be completed in the coming months. North reiterated that, as of year-end, the Bank had determined to waive matured loans that were handled by the Bank's workout group or had been "approved by WTC, but not yet documented and/or booked…" North recommended that the matured Delaware CRE loans be available for yet additional short-term extensions without full underwriting analysis so as to avoid past due issues.

72. Harra replied to North's email, inquiring about the meaning of a portion of North's memorandum that recommended that it "be imperative … that these extensions be followed up by the full execution of any required documentation…" On March 25, 2010, North replied, explaining that the Bank had failed to execute CITAs for "a skew" of Delaware CRE loans that had been authorized for extensions during the year-end push. Thus, North acknowledged, and Harra was aware, that matured loans that had been authorized for extension

and waived from the Bank's public reporting for the fourth quarter of 2009 had not been re-underwritten or extended by signed CITAs by March 25, 2010, nearly a full quarter later.

73. On or about March 26, 2010, Gibson, Harra, North and the Bank's CEO met to discuss the issues that North had raised in his March 24, 2010 email and memorandum. They agreed that, going forward, the Bank would publicly report its matured loans as past due unless and until the loan had been extended by agreements (CITAs) signed by the borrower and received by the Bank, with the exception that matured workout loans could still be waived. This change in the Bank's waiver practice was then communicated internally within the Bank, to its lending staff.

74. On March 26, 2010, the Bank's lending management was informed that the failure to have CITAs executed for allegedly extended loans would be an issue for "the SEC." In a March 29, 2010 email to other lending managers, the Bank's Delaware Market Manager described the project of executing full extensions as a "very critical task we must complete by quarter end" and noted that he had spent time with a major borrower that day "strongarming his extensions."

75. In the last few days of March 2010, North facilitated a rush project to attempt to extend – *i.e.*, internal authorizations followed by documentation and CITAs executed by the Bank and the borrower – over 175 matured loans by quarter end (March 31). In the last two days of March, North authorized loan officers to seek additional short-term extensions of at least 117 loans, because the Bank needed more time to appropriately review and analyze the loans to determine their long-term treatment. The majority of these approvals related to matured loans

that were well over 90 days past due, and that the Bank had waived from past due reporting in prior quarters.

76. In early April 2010, North informed Gibson, Harra and others that the rush extension project had not been fully successful and that, consequently, over $35 million in matured loans had not been extended by quarter end (March 31). North suggested – in contravention of the determination that he, Gibson, and Harra had made at their March 26 meeting – that, for its first quarter 2010 results, the Bank again should waive matured loans that had not been extended by quarter end.

77. On or about April 8, 2010, North approved the Delinquency Report for the first quarter of 2010, which marked $48.1 million in matured loans past due 90 days or more to be waived because they were "Matured, Interest Current/in Process of Renewal." Gibson received a copy of this Delinquency Report indicating the loans marked for waiver. The Delinquency Report also indicated that, of the $48.1 million waived loans, the Bank had risk-rated $37.3 million (over 77%) as "substandard."

78. Based on the April 8 Delinquency Report, the Bank Controller's group subsequently omitted from its first quarter 2010 PDNP Report the $48.1 million in loans that had been marked to be waived. Consequently, the Bank's first quarter 2010 earnings release and Form 8-K (filed on April 23, 2010) and its Form 10-Q (filed on May 10, 2010) each disclosed only $39.7 million in accruing loans 90 days or more past due, thus understating such loans by $48.1 million (*i.e.*, the loans it had waived for that quarter). Those filings also repeated the false past due loan disclosures that the Bank had made for the fourth quarter of 2009 (and other

periods) without any correction or restatement, and without any additional disclosure to enable the public to understand the true condition of the Bank's past due and matured loan portfolio.

79. The first quarter 2010 earnings release noted the increase in the Bank's past due loans from the preceding quarter, and, at North's suggestion, included the following misleading statement: "Most of this [$9.7 million] increase [in past due loans] was associated with commercial real estate/construction loans that have matured but not paid off, and for which underwriting extensions are underway." The Bank included a similar statement in its first quarter 2010 Form 10-Q.

80. The statement was false because it did not acknowledge that the true number of past due loans was actually $48.1 million higher than reported. The statement was also misleading because it disguised the fact that the prior quarter's past due number was actually much higher than the Bank had reported. In fact, the actual first quarter amount of past due loans reflected a decline, but only because of the massive extension effort undertaken to deal with a huge past due balance that had never been disclosed and that included many credit problems. In addition, due to the large number of temporary extensions made at the end of the first quarter, loans far in excess of the $9.7 million disclosed were still undergoing "underwriting extensions" or other analysis necessary for appropriate longer-term dispositions. Taken together, the Bank's false disclosures and omissions created the highly misleading impression that the Bank had only a small volume of matured loans in its portfolio, and that the rest of its accruing loans had been properly extended after full underwriting and analysis.

81. At the time of the filing of the Bank's Form 10-Q for the first quarter of 2010, Gibson, Rakowski and North knew that it contained the above-described false and misleading

statements regarding the amount of the Bank's loans that were accruing but past due 90 days or more.

82. Gibson, Harra, Rakowski and North approved, and participated in drafting, the first quarter 2010 earnings release, and each participated in drafting the first quarter 2010 Form 10-Q. Gibson, as CFO, also signed and certified this Form 10-Q. As in prior quarters, Harra, Rakowski and North each signed a subcertification concerning the Bank's quarterly results (described in paragraph 46 above).

83. Furthermore, despite Gibson's and Harra's knowledge in late March 2010 that the Bank's 2009 Form 10-K contained materially false and misleading statements and omissions concerning the amount of the Bank's loans that were accruing but past due 90 days or more, Gibson and Harra nonetheless failed to correct those false and misleading statements publicly (or take any steps to do so).

E. Second Quarter 2010 Disclosures

84. In early July 2010, shortly after the close of the second quarter of 2010, Gibson directed North to cease waiving matured workout loans. North objected to this change because he felt "it would add noise to our numbers we'd have to explain." Gibson confirmed the change should be made, and North announced to lending management that "effective 6/30 the only Past Dues we will waive will be Bank Errors…We will no longer be waiving matured loans due to [interest] being current or an extension in process, etc."

85. On or about July 2, 2010 Gibson's direct report informed Gibson that the preliminary Delinquency Report revealed an increase of over $140 million in commercial accruing loans past due 90 days or more, and that $111 million of the increase was due to loans

that had matured again – after having been temporarily extended as part of the Bank's earlier "extension push."

86. In a July 7, 2010 exchange that included Gibson, North, Rakowski and others, North responded to concerns about the volume of past due loans by noting the large, material, difference between the volume of past due loan numbers when the Bank waived loans and when it did not. North suggested that the Bank revert to its prior policy of waiving matured, interest current loans in workout or for which the Bank had internally authorized but had not executed extensions (*i.e.*, for which the Bank failed to obtain CITAs signed by borrowers). The Bank's new Credit Risk Manager opined that the Bank should report the matured loans as past due unless there was "a properly executed extension or modification agreement in hand."

87. Also countering North's July 7 email suggestions, Gibson emphatically responded to North that the loans he was suggesting waiving were "past due!" North reiterated what the Bank's strategy with respect to matured loans had been – *i.e.*, to extend them temporarily in order to buy more time to address them in the "'right' way relative to long-term extensions." North also emphasized the material differences in the amount of loans that would be reported as past due under the Bank's prior waiver practice (employed for its fourth quarter 2009 reporting) and without waivers, as contemplated in July 2010 (for its second quarter 2010 reporting). To reduce the publicly-reported amount of past due loans for the second quarter of 2010, North further suggested "backdating" $24 million in loans – *i.e.*, manually changing the maturity dates in the Bank's records so that loans that had been extended after the end of the second quarter of 2010 would falsely appear to have been extended before quarter end.

88. Despite the July 7, 2010 email exchange among North, Gibson and others, on July 8, 2010, North directed his staff to mark as waived from the second quarter 2010 Delinquency Report approximately $83.6 million in commercial loans with the comment that they had "Extension approved, documented and sent for processing." Although some of these $86.3 million in loans apparently had been properly extended prior to the end of the second quarter (and, thus, were not past due), this figure also included at least $24 million in "backdated" loans that were past due at quarter end and, thus, should have been reported as past due. North's staff provided new maturity dates in the Delinquency Report so that other Bank staff could manually change the Bank's records so that the $24 million in loans would appear to have been extended before quarter end. North approved the Delinquency Report.

89. Later on July 8, 2010, Credit Risk Management staff who received the Delinquency Report confirmed to Gibson's direct subordinate that her group would be "manually changing" the Bank's records, resulting in the $24 million in loans falsely appearing not to have been past due as of the end of the second quarter.

90. Also on July 8, 2010, North separately informed Gibson that the final commercial past due loan balances "net of those loans waived," would be $94.5 million. Gibson also received on July 8 the Delinquency Report showing the waivers, the new maturity dates, and the risk ratings of the loans.

91. Also on July 8, 2010, Gibson emailed Harra, Rakowski, North and others regarding a *Wall Street Journal* article on "extend and pretend" practices in commercial real estate lending, which highlighted the concern that "rampant modification of souring loans masks the true scope of the commercial property market weakness, as well as the damage ultimately in

store for bank balance sheets." In his email, Gibson noted that the article would prompt questions concerning the Bank's practices on extending loans. He directed his staff to collect information on "any second or more extensions…"

92. On or about July 9, 2010, the Controller's Division, with Rakowski's knowledge, removed the loans marked to be waived from the Delinquency Report in preparing the PDNP Report, which, when consolidated with reports from other areas, showed that $106.2 million in total past due loans would be publicly reported as accruing loans past due 90 days or more.

93. On or about July 15, 2010, Gibson asked North and others to provide him additional information to help publicly explain the sharp spike in past due loans for the quarter and what investors could expect in future quarters. North informed Gibson that, of the $94.5 million in past due loans that would be reported, only $39.3 million were expected to be extended within 30 days.

94. On July 15, 2010, the Mid-Atlantic Market COO also informed Gibson that the balance of past due loans (*i.e.*, those not expected to be extended within 30 days) included some of the Bank's largest and most complicated Delaware CRE relationships. Gibson also knew at that time that the Bank had temporarily resolved a portion of its matured loan problem by extending many loans on a short-term basis during the quarter, and that many of these loans had already been extended multiple times for short terms. Thus, as Gibson knew, these loans still lacked appropriate underwriting and documentation, such as appraisals, that were required for long-term loan extensions, modifications or restructurings.

95. On July 19, 2010, Gibson's direct report informed Gibson, North and others that the Bank's credit rating agency had received an advance copy of the Bank's financial and credit

risk results for the second quarter of 2010 and immediately had questioned the big increase in the Bank's past due loans over the prior quarter. Gibson expressed his concern about publicly explaining this increase, particularly given the Bank's continual inability to extend its loans, and stated that "the market looks very poorly on this kind of trend."

96. The Bank incorporated the numbers from the June 2010 PDNP Report in its disclosures of accruing loans past due 90 days or more in the second quarter 2010 earnings release and Form 8-K (filed on July 23, 2010) and, subsequently, in its Form 10-Q (filed on August 5, 2010). It reported only $106.2 million in total past due loans, thus understating its past due loans by the $24 million in matured commercial loans that had been improperly backdated.

97. At the time the Bank filed its Form 10-Q for the second quarter of 2010, Gibson and North knew that the Form 10-Q falsely understated by $24 million the Bank's accruing loans past due 90 days or more.

98. Gibson initially objected to discussing the past due loans in the Bank's second quarter 2010 earnings release, but the Bank's Investor Relations manager suggested that discussion was appropriate because the increase in past dues could be viewed as a "leading indicator."

99. Gibson ultimately approved the second quarter earnings release that generally described an increase in past due loans over the prior quarter, and attributed $39.3 million of the volume of past due loans to matured loans that were being renewed. This earnings release, however, did not disclose that the increase was due, in part, to the fact that, unlike prior quarters, the Bank was now reporting most of its matured loans as past due. Harra, Rakowski and North

were also copied on the drafts and were approvers of the earnings release. A similar statement appeared in the Form 10-Q, which Gibson and Rakowski were involved in drafting.

100. On the Bank's earnings telephone conference call held on July 23, 2010 – attended by Gibson and others for the Bank – an analyst asked why the Bank had not classified its accruing past due loans as nonaccruing. Gibson's response falsely and misleadingly implied that the Bank had consistently followed GAAP in reporting its matured loans as past due: "There was a group of loans that, for a variety of reasons, the renewal process is taking longer than expected. They are current on interest, but technically, because they have matured, they are past due their principal." Gibson also stated: "We are in the process here and expect to renew those very soon. Those are, in terms of risk ratings, will be returned to performance status." His response was false and misleading because, as Gibson knew, over 60% of the disclosed matured past due loans were risk rated "substandard" and/or were in workout, and there was no reasonable basis to expect them to be renewed or to return to performing status. Gibson's statements misleadingly omitted the truth about the Bank's waiver practices, its multiple quarters of undisclosed past due loans, its mass short-term extension pushes, and other information necessary to make his statements not misleading.

101. Gibson was aware of the effect of the Bank's changed waiver practices (*i.e.*, the elimination of matured loan waivers, with the exception of the "backdated" loans) on the Bank's past due loan disclosure, but made no effort to assess the Bank's previously-issued financial statements to determine whether the errors required correction. Instead, the Bank's second quarter 2010 public filings again carried forward the understated past due loan amounts for the fourth quarter 2009 public filings (and other periods), and did not disclose that the current

period's past due loan disclosures were based on materially different practices than in prior periods.

102. The second quarter 2010 Form 10-Q was also misleading because, although it discussed matured loans undergoing renewal, it omitted discussion of the Bank's significant historical problem regarding the timely and proper re-underwriting of matured loans, and of the Bank's large volume of loans that had been internally approved for short-term extensions multiple times.

103. Gibson, as CFO, signed and certified the Form 10-Q. Harra, Rakowski and North each signed a subcertification concerning the Bank's quarterly results as they had in prior quarters (described in paragraph 46 above).

II. UNDERSTATED NONACCRUING LOANS AND RESERVES

A. Third Quarter 2009

104. As stated in its public SEC filings, Wilmington Trust's policy regarding non-performing loans was to stop accruing into income interest on a loan "when we doubt that we will be able to collect interest or principal" and that it "consider[ed] a loan impaired when it is probable that the borrower will be unable to pay all amounts due according to the contractual terms of the loan agreement." The Bank's disclosed policy was to "generally place [commercial and residential mortgage] loans, including [impaired loans], on nonaccrual status after they have become 90 days past due…We return loans we have not charged off to accrual status when all principal and interest delinquencies become current, and when we are reasonably assured that contractual payments will continue." Wilmington Trust disclosed this policy in its Form 10-K

for 2008 and incorporated it by reference in its Form 10-Q for the third quarter of 2009, and in its Form 10-K for 2009.

105. In early 2009, the Bank instituted a policy that loans risk rated "substandard-accruing" that were current for interest only because interest was being paid from an "interest reserve" (*i.e.*, a portion of the original loan set aside to cover interest payments) or from the proceeds of a second loan were to be re-classified as substandard-nonaccruing (*i.e.*, a nonperforming loan for which the Bank was no longer accruing interest into income) and thus considered impaired according to Bank policy. However, for the first nine months of 2009, the Bank had no effective procedures to identify its interest reserve loans.

106. In early October 2009, after a *Wall Street Journal* article discussed the potential for interest reserve loans to mask nonperformance of construction loans, Gibson asked the Bank's Credit Risk Manager to gather information concerning the Bank's interest reserve loans in preparation for the Bank's third quarter 2009 earnings call.

107. On October 20, 2009, the Credit Risk Manager sent an email to her staff listing substandard-accruing loans with interest being paid from interest reserves or from a second loan as of September 30, 2009. She wrote: "We may have a problem…[I]f these loans are being paid by another loan, then they need to be placed on nonaccrual – as it is not appropriate to recognize interest income on a Substandard-rated loan, when the source of that income is a draw on another loan…" The list identified, among others, loans to three construction projects that were held on the Bank's books as substandard-accruing as of September 30, 2009 (the "Construction Loans"). The Credit Risk Manager concluded that the Construction Loans were required to be classified as nonaccruing in accordance with the Bank's policy.

108. On October 27, 2009, the Credit Risk Manager invited Gibson, Rakowski, North and others, to a meeting the following day, stating: "I think we need to discuss nonaccrual #s in person this month." On October 28, 2009, she sent another email to Gibson and others, summarizing her nonaccrual recommendations for the meeting. In the email, she noted that the basis for her nonaccrual recommendations was that two of the Construction Loans were substandard as of the third quarter and were funded by interest reserve; and that, for the third, "a change in communicated collection prospects was the trigger" for the nonaccrual recommendation.

109. Notes from the October 28 meeting indicate that the meeting was attended by the Credit Risk Manager, Gibson, Rakowski and others, that the meeting attendees acknowledged that, according to the Bank's policy, the Construction Loans should have been classified as nonaccrual, and that the reason for not identifying the Construction Loans as nonaccruing earlier was due to the Bank's ineffective "manual" process for identifying interest reserve loans.

110. Gibson approved the nonaccrual recommendations, including the Construction Loans, the outstanding balances of which totaled $24.1 million.

111. The conditions underlying the nonaccrual designations existed during the third quarter of 2009. Therefore, the Bank was required to disclose the nonaccruals in its third quarter 2009 financial statements.

112. The Bank's Form 10-Q for the third quarter of 2009, filed on November 9, 2009, did not include the Construction Loans in its disclosures of nonaccruing loans for the third quarter, as required by the Bank's policies, and did not otherwise disclose those nonaccruals. In addition, the filing stated that the Bank had evaluated subsequent events through the date of the

filing, and that it had "determined that there were no recognized or unrecognized subsequent events to report."

113. The Bank's Form 10-Q for the third quarter of 2009 reported a total of $365.9 million in nonaccruing loans for the third quarter of 2009, which represented an increase of $67.1 million in nonaccruing loans over the amount reported in the prior quarter. The actual increase in nonaccruing loans was $91.2 million, including the additional $24.1 million in nonaccruing loans that Gibson elected not to disclose, or 35.9% of the total actual increase in non-accruing loans. In other words, the actual increase was understated by more than one-third.

114. Gibson signed and certified the filing, knowing or recklessly disregarding that it did not disclose a material amount of loans that were nonaccruing as of the third quarter of 2009.

B. Fourth Quarter and Year Ended 2009

115. At the end of December 2009, the Bank's CEO and Gibson directed Bank employees to assess the Bank's loan portfolio in order to explain to the public the Bank's poor results for the 2009 fourth quarter. Gibson was aware that the Delaware CRE portfolio had not been adequately monitored and that the Bank had initiated various "deep dives" into the portfolio, including the "Surge" project, so that the Bank could better understand the uncertain credit quality of that portfolio. As the Bank prepared its earnings release for the fourth quarter, Gibson requested data from the Surge in anticipation of providing the information to the Board.

116. During the relevant period, the Bank's public filings indicated that it established its reserve for loan losses in accordance with GAAP by charging a provision for loan losses against income. The effect of increased provisions for loan losses is to reduce the Bank's net income. The Bank's methodology for calculating the required reserve for "performing" loans

was based in part on the risk rating of the performing loans. In general, downgrading the risk ratings for performing loans would increase the required reserve for such loans.

117. On January 24, 2010, North provided Gibson a "Global Cash Flow Review" that revealed significant deterioration trajectories in ten of the Bank's largest CRE loan relationships, resulting in risk rating downgrades for $37 million in performing loans. North also informed Gibson that an additional 20 loans reviewed in the Surge required risk rating downgrades.

118. That same day, Gibson asked North whether the downgrades were included in the fourth quarter's results. Gibson also asked the Credit Risk Manager to confirm the negative risk rating migrations from the Global Cash Flow Review and, specifically, whether any of the loans needed to be downgraded to a substandard risk rating as "obviously [that] could have a major impact on provisions."

119. On the morning of January 25, 2010, the Credit Risk Manager confirmed with Gibson that downgrades were required for the ten relationships from the Global Cash Flow Review, including four relationships that required downgrades to substandard classification, and that "the overall provision increment suggested by these changes is a $10.5 [million] increase" based on the Bank's reserve methodology. The Credit Risk manager emphasized that "any observations or rating changes made as a result of the SURGE were NOT captured in the 4Q ratings/reserves."

120. Later that evening, Gibson sent a memorandum to the Board concerning fourth quarter results. He touted the Bank's completion of the Global Cash Flow Reviews, and stated that these and the Surge loan reviews were "at a much greater depth (bottom-up, loan by loan)"

than reviews by the Bank's Asset Review Division or its independent auditor. Gibson did not mention the required downgrades or increased reserves.

121. A few hours later, Gibson directed North to delay the downgrades, on the pretext that the reviews were not complete, stating: "Let's not jump into downgrade mode just yet. [Asset review] would have to do more work than just a conversation with [Bank personnel managing the Surge]."

122. In addition to the increased loan loss provision of $10.5 million associated with the ten Global Cash Flow Review relationships, the downgrades of the 20 Surge-reviewed loans required an additional provision of $1.6 million based on the Bank's reserve methodology, for a total increase to the provision of $12.1 million. However, in the Bank's Form 10-K, filed on February 22, 2010, the required increase to the provision was not recognized as a fourth quarter event (*i.e.*, the provision was not increased to reflect the downgrades). The increase was also not disclosed as a subsequent event as otherwise required by GAAP.

123. In its 2009 Form 10-K, the Bank recognized a loan loss provision of $82.8 million. The additional $12.1 million provision would have increased the provision to $94.9 million, or 14.6%, a material difference. The Bank recorded a loss before income taxes and noncontrolling interest of $37.3 million, and the increased provision would have deepened the loss by 32%.

124. None of the information about the Surge loans – neither the resultant downgrades, nor the increased reserves, nor the increasing deterioration indicated by the review, nor the fact that the Bank lacked an in-depth understanding of the Delaware portfolio and its underlying risks – was otherwise disclosed in the 2009 Form 10-K. This information would have indicated the

true decline in the credit quality of the Bank's loans, and would have provided investors a more accurate, and significantly more negative, picture of the Bank's present condition and the future prospects of its loan portfolio.

125. Gibson signed and certified the Bank's 2009 Form 10-K filing, knowingly or recklessly disregarding these material omissions.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act [U.S.C. § 77q(a)]
(All Defendants)

126. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

127. With respect to the public offering of Wilmington Trust securities in February and March 2010, and false and misleading statements and omissions contained in Wilmington Trust's Form 10-K for the year ended 2009, which was incorporated by reference into the offering documents, Defendants Gibson, Harra, Rakowski and North, directly or indirectly, singly or in concert with others, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities: (1) employed devices, schemes, or artifices to defraud; (2) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

128. By reason of the foregoing, Gibson, Harra, Rakowski and North violated and, unless restrained and enjoined, will continue violating, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
Fraud - Section 10(b) of the Exchange Act and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]
(Gibson and Harra)

129. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

130. Defendants Gibson and Harra, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

131. By reason of the foregoing, Defendants Gibson and Harra violated, and unless restrained and enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]. Gibson violated these provisions with respect to the Bank's earnings release and Form 10-K for the year ended 2009; the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first and second quarters of 2010; and his statements in the earnings conference call for the second quarter of 2010. Harra violated these provisions with respect to the Bank's Form 10-K for the year ended 2009.

THIRD CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rule 10b-5(b) Thereunder
(Rakowski and North)

132. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

133. Defendants Rakowski and North each knowingly provided substantial assistance to violations by Gibson and Harra of Section 10(b) of the Exchange Act, and Rule 10b-5(b) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5b].

134. By reason of the foregoing, Rakowski and North aided and abetted and, unless restrained and enjoined, will continue aiding and abetting, violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5b], in violation of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]. Rakowski aided and abetted these violations with respect to the Bank's Form 10-K for the year ended 2009; and the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first quarter of 2010. North aided and abetted these violations with respect to the Bank's Form 10-K for the year ended 2009; and the Bank's Forms 10-Q for the third quarter of 2009 and first and second quarters of 2010.

FOURTH CLAIM FOR RELIEF
Violations and Aiding and Abetting Violations of Section 10(b)
of the Exchange Act and Rules 10b-5(a) and 10b-5(c) Thereunder
(Rakowski and North)

135. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

136. Defendants Rakowski and North, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities

exchange to employ devices, schemes, or artifices to defraud; and to engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

137. By reason of the foregoing, Rakowski and North violated and, unless restrained and enjoined, will continue violating, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(c). Rakowski violated these provisions by engaging in deceptive conduct with respect to the Bank's earnings release and Form 10-K for the year ended 2009; and the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first and second quarters of 2010. North violated these provisions by engaging in deceptive conduct with respect to the Bank's earnings release and Form 10-K for the year ended 2009; and the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first and second quarters of 2010.

138. In the alternative, Rakowski and North knowingly substantially assisted Gibson and Harra's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(c).

139. By reason of the foregoing, Rakowski and North aided and abetted and, unless restrained and enjoined, will continue aiding and abetting, Gibson and Harra's violations of Section 10(b) of the Exchange Act, and Rules 10b-5(a) and 10b-5(c) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. §§ 240.10b-5(a) and 240.10b-5(c)], in violation of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]. Rakowski aided and abetted these violations by engaging in deceptive conduct with respect to the Bank's earnings release and Form 10-K for the year ended 2009; and the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first quarter of 2010. North aided and abetted these violations by engaging in deceptive conduct with

respect to the Bank's earnings release and Form 10-K for the year ended 2009; and the Bank's earnings releases and Forms 10-Q for the third quarter of 2009 and first and second quarters of 2010.

FIFTH CLAIM FOR RELIEF
Circumvention of Internal Controls and Falsified Books and Records – Section 13(b)(5) of the Exchange Act
[15 U.S.C. § 78m(b)(5)]
(All Defendants)

140. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

141. Defendants knowingly circumvented, or knowingly failed to implement, a system of internal accounting controls or knowingly falsified books, records, or accounts of Wilmington Trust.

142. By reason of the foregoing, Defendants violated, and unless restrained and enjoined will in the future violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

SIXTH CLAIM FOR RELIEF
Falsified Books and Records - Exchange Act Rule 13b2-1
[17 C.F.R. § 240.13b2-1]
(All Defendants)

143. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

144. Defendants, directly or indirectly, falsified or caused to be falsified books, records, or accounts of Wilmington Trust.

145. By reason of the foregoing, Defendants violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

SEVENTH CLAIM FOR RELIEF
Aiding and Abetting False SEC Filings - Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13
[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]
(Gibson, North and Rakowski)

146. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

147. Wilmington Trust Corp., an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading annual, quarterly and current reports with the Commission that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

148. Defendants Gibson, North and Rakowski aided and abetted Wilmington Trust in that they, with knowledge of the primary violations by Wilmington Trust, provided substantial assistance to Wilmington Trust in the commission of its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

149. By reason of the foregoing, Defendants Gibson, North and Rakowski aided and abetted, and unless restrained and enjoined will in the future aid and abet, violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

EIGHTH CLAIM FOR RELIEF
Aiding and Abetting False SEC Filings - Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11
[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11]
(Harra)

150. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

151. Wilmington Trust Corp., an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading annual, quarterly and current reports with the Commission that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11].

152. Defendant Harra aided and abetted Wilmington Trust in that he, with knowledge of the primary violations by Wilmington Trust, provided substantial assistance to Wilmington Trust in the commission of its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11].

153. By reason of the foregoing, Harra aided and abetted, and unless restrained and enjoined will in the future aid and abet, violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-11 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11].

NINTH CLAIM FOR RELIEF
Aiding and Abetting Violations of the Books and Records and Internal Control Provisions of the Exchange Act
(Sections 13(b)(2)(A) and 13(b)(2)(B))
[15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]
(All Defendants)

154. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

155. By engaging in the foregoing conduct, Wilmington Trust Corp., an issuer of securities registered pursuant to Section 12 of the Exchange Act, (a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and (b) failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that: (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability of assets.

156. By engaging in the foregoing misconduct, Wilmington Trust violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

157. Defendants aided and abetted Wilmington Trust in that they, with knowledge of the primary violations by Wilmington Trust, provided substantial assistance to Wilmington Trust in the commission of its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

158. By reason of the foregoing, Defendants aided and abetted Wilmington Trust's violations, and unless restrained and enjoined will continue to aid and abet, violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and (B)].

TENTH CLAIM FOR RELIEF
Violations of Certifications Rules of the Exchange Act
(Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14])
(Gibson)

159. Paragraphs 1 through 125 are hereby realleged and incorporated by reference.

160. Acting under Section 302 of the Sarbanes-Oxley Act of 2002 and Exchange Act Rule 13a-14, Gibson certified on behalf of Wilmington Trust Forms 10-Q on November 9, 2009, May 10, 2010 and August 5, 2010, and 10-K on February 22, 2010.

161. Specifically, he certified that they had reviewed these reports and that, based on their respective knowledge, the reports did not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and, based on their knowledge, the financial statements and other financial information included in the reports, fairly presented in all material respects the financial condition, results of operation and cash flows of Wilmington Trust for the periods presented on the reports.

162. At the time Gibson issued these certifications, he knew or recklessly disregarded that the reports he certified contained untrue statements of material facts and/or omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

163. By reason of the foregoing, Gibson violated and unless enjoined will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

I.

Permanently restraining and enjoining Gibson and Harra from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder [15 U.S.C. §§ 78j(b) and 78m(b)(5) and 17 C.F.R. §§ 240.10b-5 and 240.13b2-1].

II.

Permanently restraining and enjoining Rakowski and North from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5(a), 10b-5(c) and 13b2-1 thereunder [15 U.S.C. §§ 78j(b) and 78m(b)(5) and 17 C.F.R. §§ 240.10b-5(a); 240.10b-5(c) and 240.13b2-1] and aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)]; or, in the alternative, permanently restraining and enjoining Rakowski and North from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder [15 U.S.C. §§ 78j(b) and 78m(b)(5) and 17 C.F.R. §and 240.13b2-1] and aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

III.

Permanently restraining and enjoining Gibson, Rakowski and North from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules

12b-20, 13a-1, 13a-11, and 13a-13 thereunder [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B) and 17 C.F.R. §§ 240.12b-20, 240.13a-l, 240.l3a-11 and 240.13a-13];

IV.

Permanently restraining and enjoining Harra from abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B) and 17 C.F.R. §§ 240.12b-20, 240.l3a-1 and 240.13a-11];

V.

Permanently restraining and enjoining Gibson from violations of Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14];

VI.

Ordering Defendants to disgorge ill-gotten gains received as a result of the conduct alleged herein, plus prejudgment interest thereon;

VII.

Ordering Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

VIII.

Barring Gibson and Harra from serving as an officer or director of any pubic company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and

IX.

Granting such other and further relief as this Court deems just and appropriate.

Dated: May 6, 2015
New York, New York

SECURITIES AND EXCHANGE COMMISSION

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