

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21000

In the Matter of

**MICHAEL JAMES
FERGUSON JR. FOREIGN
PRIVATE TRUST,**

Respondent.

**DECLARATION OF KENNETH LIEBL IN SUPPORT OF
THE DIVISION OF ENFORCEMENT’S SUPPLEMENTAL BRIEF IN
FURTHER SUPPORT OF ITS MOTION FOR ENTRY OF DEFAULT AND
IMPOSITION OF REMEDIAL SANCTIONS AGAINST RESPONDENT**

I, Kenneth Liebl, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an Examination Manager in the Division of Examinations (“Examinations”) at the New York Regional Office of Plaintiff Securities and Exchange Commission (the “Commission”). I joined Examinations in 1989 as a Securities Compliance Examiner.

2. I make this declaration in support of the Division of Enforcement’s (the “Division’s”) supplemental brief in further support of its motion for entry of default and imposition of remedial sanctions against Respondent Michael James Ferguson Jr. Foreign Private Trust (“Ferguson Trust”).

3. Unless otherwise noted, I make this Declaration based on personal knowledge, the exhibits attached hereto, and to the best of my recollection. I have described the statements of others set forth below in sum and substance and in part and not verbatim. Because the Division

submits this Declaration for the limited purpose of supporting its additional briefing and evidence, I have not set forth each and every relevant fact that I know.

A. Background

4. Examinations conducts examinations of entities registered with the Commission, including broker-dealers, investment advisers, and transfer agents, to improve compliance, prevent fraud, and monitor risk, among other things.

5. According to Ferguson Trust's May 1, 2019 Form D (the "Form D")—filed on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR")—Ferguson Trust is a "private trust" organized in the country of Jamaica in 2018, with its principal office in New York, New York. A true and correct copy of the Form D is attached hereto as Exhibit 1.

6. According to the EDGAR docket, Ferguson Trust has been registered with the Commission as a transfer agent since June 2019. A true and correct copy of the EDGAR docket for Ferguson Trust is attached hereto as Exhibit 2.

7. Ferguson Trust's Form D states that Ferguson Trust sought to raise money from investors in an unregistered securities offering. (Ex. 1.)

8. The next month, on June 13, 2019, Ferguson Trust filed on EDGAR Commission Form TA-1 (the "Form TA-1") to register with the Commission as a transfer agent. The Form TA-1 listed Ferguson Trust's principal office as 217 West 127th Street, Apt. 5G, New York, New York, 10027; and its mailing address as 521 West 146th Street, Suite 215 Box, New York, New York 10031. A true and correct copy of the Form TA-1 is attached hereto as Exhibit 3.

9. In February 2020, Ferguson Trust filed Commission Form C (the "Form C") on EDGAR, seeking to raise a maximum of \$1 million in an unregistered securities offering in reliance on specific statutory and regulatory provisions. A true and correct copy of the Form C is

attached hereto as Exhibit 4.

10. Noble Mikhail Jabal Mohommet Firdaus El (“Firdaus El”) is listed on the above Ferguson Trust EDGAR filings as Ferguson Trust’s chief executive officer, executive director, president, treasurer, and “controller of currency,” among other titles. Firdaus El signed each of these filings. (*See* Exs. 1, 3, 4.)

II. Ferguson Trust Failed to File a Required Annual Report for the Year 2019.

11. By March 31, 2020, Ferguson Trust was required to file its annual transfer agent report with the Commission on Form TA-2 for the year 2019, under the Securities Exchange Act of 1934 (“Exchange Act”) Section 17A(c)(2) and Rule 17Ac2-2. Ferguson Trust failed to do so. (*See* Ex. 2.)

III. Ferguson Trust Failed to Provide Documents to the SEC’s Division of Examinations.

12. In or about July 2020, Examinations in the New York Regional Office initiated an examination of Ferguson Trust. The Examinations team was comprised of then-Assistant Regional Director Steven Vitulano (“Vitulano”), staff accountant Donna Gallagher (“Gallagher”), and me. A true and correct copy of an email and attachments from Gallagher to Firdaus El, copying me, dated July 30, 2020, is attached hereto as Exhibit 5.

13. On July 30, 2020, Gallagher and I spoke with Firdaus El by telephone to schedule a telephone interview for August 3, 2020. (*Id.*)

14. Also on July 30, 2020, Gallagher followed up the telephone call by emailing Firdaus El a formal request, pursuant to Exchange Act Sections 17(a) and (b), for records and information relating to Ferguson Trust and its transfer agent activities. (*Id.*)

15. At Firdaus El’s request, Examinations subsequently agreed to reschedule the August 3, 2020 telephone interview to August 6, 2020. A true and correct copy of an email from

me to Firdaus El, copying Gallagher, dated August 11, 2020, is attached hereto as Exhibit 6.

16. Firdaus El failed to answer when Gallagher and I telephoned him at the scheduled time on August 6, 2020. A true and correct copy of an email from me to Vitulano, copying Gallagher, dated August 6, 2020, is attached hereto as Exhibit 7.

17. Examinations subsequently reached out to Firdaus El *nine* times from August 6 through August 24, 2020—by voicemail, email, and letter—to follow up on the document requests to Ferguson Trust and to reschedule the interview with Firdaus El. Specifically:

- On August 6, 2020, I left Firdaus El a voicemail and sent him a secure email notifying him of his failure to appear for a scheduled telephone interview and requesting to reschedule. (Ex. 6.) A true and correct copy of an email and attachment from me to Firdaus El, copying Vitulano and Gallagher, dated August 18, 2020, is attached hereto as Exhibit 8.
- On August 11, 2020, I left Firdaus El a voice message and sent him a secure email inquiring about the status of Ferguson Trust's production of records and requesting to reschedule the interview. (Ex. 6; Ex. 8.)
- On August 18, 2020, I sent Firdaus El a letter sent via secure email and UPS informing Ferguson Trust that Examinations considered the Trust's failure to provide certain books and records for examination to be a violation of Section 17(b) of the Exchange Act; and reiterating the request for Ferguson Trust to produce documents. (Ex. 8.)
- On August 19, 2020, I sent Firdaus El a secure email notifying Ferguson Trust that it had not yet produced any records, instructing Ferguson Trust to produce records by a new deadline, and requesting that a representative of Ferguson Trust be available for an interview. A true and correct copy of an email and attachment from me to Firdaus El, copying Vitulano and Gallagher, dated August 19, 2020, is attached hereto as Exhibit 9.

Later that day, I sent two additional emails to Firdaus El rescheduling the interview. A true and correct copy of an email from me to Firdaus El, copying Vitulano and Gallagher, dated August 19, 2020, is attached hereto as Exhibit 10.

- On August 24, 2020, Gallagher sent Firdaus El a secure email with dial-in information for an initial interview. A true and correct copy of an email from Gallagher to Firdaus El and me, dated August 24, 2020, is attached hereto as Exhibit 11.

18. Vitulano, Gallagher, and I ultimately were able to interview Firdaus El on August 25, 2020 by telephone (the “August 25 Interview”). A true and correct copy of an email and attachment from Gallagher to Firdaus El, copying Vitulano and me, dated August 25, 2020, is attached hereto as Exhibit 12.

19. During the August 25 Interview, Firdaus El informed us that the office address and mailing address listed on Ferguson Trust’s 2019 Form TA-1 were no longer valid and provided a new address.

20. During the August 25 Interview, we reviewed our document requests with Firdaus El and highlighted certain requests for which we thought Ferguson Trust was likely to have documents readily available. (*Id.*)

21. Following the August 25 Interview, Gallagher re-sent Firdaus El the document requests, indicating in bold the specific requests that Examinations thought would be easiest for Ferguson Trust to fulfill, and requesting that Ferguson Trust produce documents by August 31, 2020. (*Id.*)

22. On September 2, 2020, Firdaus El telephoned Gallagher, told her that he had not looked at the document requests, and requested a 72-hour extension, until September 5, 2020, to produce documents. Gallagher agreed to the extension.

23. Three days after the September 5 deadline had lapsed, Firdaus El emailed the Examinations staff and wrote: “Sorry running a bit late. Waiting for my business partner to get back to me about some of the documents you requested. May have to send by midnight tonight.” A true and correct copy of an email from Firdaus El to me, copying Gallagher and Vitulano, dated September 8, 2020, is attached hereto as Exhibit 13.

24. Firdaus El never sent Examinations any documents.

25. On September 25, 2020, my colleagues in Examinations and I spoke to Firdaus El by telephone in an examination exit interview and informed him of the deficiencies found by Examinations during its investigation, including that Ferguson Trust failed to file both an amendment to its Form TA-1, updating the Trust's address, and a Form TA-2 for 2019. A true and correct copy of an email and attached letter from me to Firdaus El, copying Gallagher and Vitulano, dated September 25, 2020, is attached hereto as Exhibit 14.

26. Later that day, Examinations followed up with a letter to Ferguson Trust, addressed to Firdaus El, identifying in writing the "deficiencies and/or weaknesses in controls" resulting from the examination so that Ferguson Trust could take "immediate corrective action." The letter identified as deficiencies Ferguson Trust's failure to file an annual transfer agent report on Form TA-2 for the year 2019, as required by Exchange Act Section 17A(c)(2) and Rule 17Ac2-2 thereunder; and its failure to file an amended Form TA-1 to update its business and mailing addresses within sixty days of the previously listed addresses becoming defunct, as required by Exchange Act Section 17A(c)(2) and Rule 17Ac2-1 thereunder. The letter also stated that Ferguson Trust was not in compliance with Sections 17(a) and (b) of the Exchange Act due to its failure to produce documents. The letter requested that Ferguson Trust respond in writing by November 24, 2020, to describe any steps that it had taken or intended to take with respect to each deficiency. (*Id.*)

27. On November 24, 2020, Firdaus El responded by email to Vitulano, claiming that Ferguson Trust's failure to comply with Examination's requests was due to a "misunderstanding that certain things were needed within a specific time frame to cover the avenues of filing or registering for Transfer Agents functions." Firdaus El described no steps that he or Ferguson Trust had taken to address the deficiencies. A true and correct copy of an email and attachment

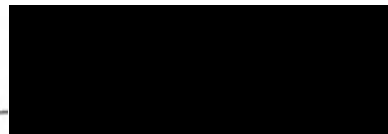
from Firdaus El to Vitulano, dated November 24, 2020, is attached as Exhibit 15.

28. By letter dated November 25, 2020, Examinations informed Firdaus El and Ferguson Trust that the Trust's response had "failed to provide any description of the steps the transfer agent has taken with respect to the findings noted in the Deficiency Letter"; that the deficiencies remained outstanding; and that Examinations was closing the exam. A true and correct copy of a letter from Vitulano to Firdaus El, dated November 25, 2020, is attached hereto as Exhibit 16.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 17, 2025
New York, New York

By: -

A black rectangular redaction box covering the signature of the declarant.