

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16098

In the Matter of :
 :
 :
WILMINGTON TRUST :
CORPORATION, :
 :
Respondent. :

PROPOSED PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) submits this proposed plan of distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for the distribution of the funds collected in the above-referenced proceeding from Wilmington Trust Corporation (“WTC” or “Respondent”) to investors who purchased or otherwise acquired shares of WTC common stock during the period January 18, 2008 through October 31, 2010 (the “Relevant Period”) and who suffered losses due to the conduct of the Respondent described in the Order.¹

2. *Background.* On September 11, 2014, the Commission issued the Order against WTC, a bank holding company based in Wilmington, Delaware (the “Cease-and-Desist Proceeding”). According to the Order, the administrative proceeding arose out of false and misleading disclosures by WTC concerning its accruing loans past due 90 days or more over multiple quarters during 2009 and 2010, its non-accruing loans in the third quarter of 2009, and its reserves for loan losses in the third and fourth quarters of 2009. The Commission found, among other things, that the Bank omitted almost \$339 million in matured loans past due 90 days or more from its disclosures in its filings with the Commission for the third quarter of 2009; omitted over \$330 million in matured loans past due 90 days or more from its disclosures in its filings for the year ended 2009; and incorporated its false and misleading Form 10-K for 2009 by reference in the offering materials for a February 2010 public offering in which the Bank sold \$287 million of its common stock. The Commission determined that, by its conduct, WTC violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, and Sections 13(a),

¹ Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 9646 (Sept. 11, 2014).

13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder. The Commission ordered the WTC to pay disgorgement of \$16,000,000 and prejudgment interest of \$2,545,896.16 to the Commission (the “Distribution Fund”). WTC has paid in full.

In a related forfeiture action, *United States v. \$44,000,000 in United States Currency*, 17-cv-01416-RGA (D. Del.), in which the United States sought WTC’s forfeiture of all right, title, and interest in \$44 million traceable to false statements made by WTC in securities and regulatory filings between the third quarter of 2009 and the second quarter of 2010, WTC defaulted, resulting in forfeiture of \$44 million (the “Forfeited Funds”) to the Department of Justice (“DOJ”) (the “Forfeiture Action”). DOJ has sent the Forfeited Funds, less the expenses incurred by the government in seizing those funds, to the Commission, so those funds can be added to the Distribution Fund for distribution through a distribution plan approved in the Administrative Proceeding. The Forfeited Funds have been added to the Distribution Fund.

The Distribution Fund is comprised of the \$18,545,896.16 collected in the Cease-and-Desist Proceeding and the \$43,993,288.93 collected in the Forfeiture Action. It is deposited in an interest-bearing account at the United States Department of the Treasury’s Bureau of Fiscal Service (“BFS”), where it will be held until a disbursement is ordered. Accrued interest and any additional funds received pursuant to court or Commission order and/or agreement shall be added to the Distribution Fund.²

The Plan provides for the distribution of the Distribution Fund, plus interest, less taxes, investment fees, and fees and expenses of tax and fund administration (“Net Available Distribution Fund”) to Eligible Investors, as defined in paragraph 7.

3. *Jurisdiction and Control.* The assets of the Distribution Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

II. Definitions

As used herein, the following definitions apply:

4. *Class Action.* The related class action, *In re Wilmington Trust Securities Litigation*, No. 1:10-CV-990 (D. Del.).

5. *Corrective Disclosures.* Corrective information released to the stock market as determined in the Class Action. Corrective Disclosures were made before the opening of trading on the following dates unless indicated otherwise: January 29, 2010, April 23, 2010, June 3, 2010 (after the close of trading), June 23, 2010, July 23, 2010, and November 1, 2010.

² If ordered by the district court, collections in a related federal district court action against four former officers of WTC: David R. Gibson; Kevin N. Rakowski; Robert Harra; and William North may be added to the Distribution Fund. See *SEC v. Gibson, et al.*, 15-cv-00363-UNA (D. Del.).

6. *Distribution Payment.* A payment to an Eligible Investor in accordance with the Plan.

7. *Eligible Investor.* An Investor who is not an Excluded Party and who is determined by the Fund Administrator to be eligible under the Plan for a Distribution Payment.

8. *Eligible Loss Amount.* Subject to paragraph 32 (*Market Loss Limitation*) below regarding actual losses, the sum of an Eligible Investor's Recognized Loss Per Share on all shares purchased during the Relevant Period, as calculated in accordance with paragraph 23, less the Eligible Investor's Prior Recovery.

9. *Excluded Parties.* The following are Excluded Parties under this Plan:

- (a) The Respondent, any person who was an officer or director of the Respondent during the Relevant Period, and any firm, trust, corporation, or other entity in which the Respondent has or had a controlling interest;
- (b) The defendants in *USA v. North, et al.*, 15-cr-23 (D. Del.) against whom judgments have been entered and their assigns, heirs, spouses, parents, dependents or controlled entity(ies); and
- (c) The Fund Administrator, its employees, agents, and those persons assisting the Fund Administrator in its role as Fund Administrator.

10. *Investors.* Individuals and entities, or their lawful successors, who purchased the Security during the Relevant Period and filed a claim in the Class Action on or before July 9, 2020 or those that filed an exclusion from the class in connection with the class notice portion of the Class Action ("opted out").

11. *Methodology.* The allocation method used to determine eligibility for distribution under the Plan and to calculate Distribution Payments as set forth in paragraphs 22-34.

12. *Prior Recovery.* The amount recovered by an Eligible Investor on their Eligible Loss Amount, whether through the Class Action or otherwise.

13. *Recognized Loss Per Share.* The loss per share as calculated in accordance with paragraph 23, below.

14. *Relevant Period.* January 18, 2008 through October 31, 2010, inclusive.

15. *Security.* Wilmington Trust Corporation common stock traded on the NYSE under the trading symbol WL.

III. Administration of the Plan

16. *Reserve.* A prudent reserve will be held back for future taxes, fees and expenses to accommodate any unexpected expenditures or distribution payments. After all distributions, taxes, fees and expenses are paid, any remaining amounts in the reserve will become part of the residual described in paragraph 47.

17. *Fund Administrator.* The Commission has appointed Epiq Systems, Inc. as the fund administrator for the Distribution Fund (the “Fund Administrator”) and set the administrator’s bond amount at \$62,539,185 in accordance with Rules 1105(a) and 1105(c) of the Commission’s Rules, 17 C.F.R. §§ 201.1105(a) and 201.1105(c).³ The Fund Administrator will administer the Distribution Fund and all reasonable administrative costs and expenses, including the Fund Administrator’s bond premium, will be paid from the Distribution Fund.

The Fund Administrator also serves as the Claims Administrator for the Class Action and in that capacity has identified participants in the settlement class. The Investors as defined coincide with the settlement class. The Fund Administrator has confirmed permission to use the claims, loss, and distribution information obtained in the Class Action in connection with the Plan, thereby obviating the need for a claims and/or deficiency process in the current proceeding.

The Fund Administrator will be responsible for, among other things, taking reasonable steps to obtain accurate mailing information for Investors; establishing a website and staffing a call center to address inquiries; performing distribution schedules, preparing communications to accompany any distribution; preparing accountings; cooperating with the Tax Administrator (defined below) to ensure compliance with tax laws, rules, and regulations including the Foreign Account Tax Compliance Act (“FATCA”); determining and ensuring compliance, as appropriate, with all foreign jurisdiction requirements for serving notices and otherwise implementing the Plan; taking antifraud measures; performing outreach on returned and uncashed checks; reporting to the Commission staff and the Commission as required; and distributing money from the Distribution Fund in accordance with the Plan.

18. *Tax Administrator.* Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds governing calendar years 2019-2021,⁴ the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Distribution Fund.⁵

The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance and any other work of the Tax Administrator ordered by the Commission. Further, the Fund Administrator will cooperate with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Distribution Fund in compliance with IRS regulations, including but not limited to FATCA.

³ Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 88779 (Apr. 30, 2020).

⁴ Exchange Act Rel. No. 85174 (Feb. 22, 2019).

⁵ Order Appointing Tax Administrator, Exchange Act Rel. No. 88395 (Mar. 16, 2019).

The Tax Administrator shall prepare a description of the tax information reporting and other related tax matters, which shall be provided to the Fund Administrator for dissemination to Eligible Investors before or contemporaneously with their distribution payments.

The Tax Administrator shall be compensated for all reasonable costs and expenses from the Distribution Fund according to the terms of Tax Administrator's 2019-2021 Letter Agreement with the Commission, and tax obligations will be paid out of the Distribution Fund.

19. *Qualified Settlement Fund.* The Distribution Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

20. *No Claims Process.* Based on information obtained in connection with the Class Action, the Commission staff has reasonably concluded that it has access to all records necessary to calculate harm pursuant to the Methodology. As a result, and aside from a limited solicitation by the Fund Administrator of further information from Investors who opted out, the Distribution Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

21. *Third Party Filers:* Custodians, trustees, or professionals investing on behalf of more than one Investor in a pooled investment fund or entity, including the administrator, custodian, or fiduciary of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), may be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple Eligible Investors, will be allocated for the benefit of current or former pooled Eligible Investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Fund Administrator. All such custodians, trustees, or professionals investing on behalf of more than one Investor in a pooled investment fund or entity must have an auditable mechanism available to the Fund Administrator and the Commission staff to confirm that each Investor, if determined an Eligible Investor, received the Distribution Payment directed to them.

IV. Methodology

A. Purpose

22. This Methodology is designed to compensate Eligible Investors based on their losses from purchases of the Security during the Relevant Period due to the conduct of the Respondent described in the Order. The Methodology by which Distribution Payments will be determined is the same as that used in the Class Action.

B. Calculation of Recognized Loss Per Share

23. The Recognized Loss Per Share will be calculated as the lesser of: (a) the difference between the amount of artificial inflation at the time of purchase or acquisition and the artificial inflation at the time of sale; and (b) the difference between the actual purchase price and sale price. If a Recognized Loss Per Share is zero or less, reflecting a gain, the Recognized Loss Per Share is zero.

For each share of the Security purchased or otherwise acquired during the Relevant Period and:

- (a) Sold before the opening of trading on January 29, 2010, the Recognized Loss Per Share is zero;
- (b) Sold from the opening of trading on January 29, 2010 through and including the close of trading on October 31, 2010, the Recognized Loss per Share is the *lesser of*:
 - i. the amount of artificial inflation per share on the date of purchase/ acquisition – the amount of artificial inflation per share on the date of sale (*see* Table A-1 to the Class Action Notice, attached as Exhibit A); or
 - ii. the purchase/ acquisition price – the sale price.
- (c) Sold on or after November 1, 2010, through and including the close of trading on January 28, 2011, the Recognized Loss Per Share is the *least of*:
 - i. the amount of artificial inflation per share on the date of purchase/ acquisition (*see* Exhibit A); or
 - ii. the purchase/acquisition price – the average closing price between November 1, 2010 and the date of sale as determined in the Class Action (*see* Table B to the Class Action Notice, attached hereto as Exhibit B); or
 - iii. the purchase/ acquisition price – the sale price.
- (d) Held as of the close of trading on January 28, 2011, the Recognized Loss Per Share is the *lesser of*:
 - i. the amount of artificial inflation per share on the date of purchase/acquisition (*see* Exhibit A); or
 - ii. the purchase/acquisition price - \$4.25.⁶

⁶ The mean (average) closing price for the Security during the 90 day look-back period was \$4.25.

C. Calculation of Eligible Loss Amount

24. Subject to the Market Loss Limitation (paragraph 32, below), an Eligible Investor's Recognized Loss Per Share on all shares purchased during the Relevant Period, as calculated in accordance with paragraph 23, will be aggregated, and offset by the Eligible Investor's Prior Recovery, to calculate the Eligible Investor's Eligible Loss Amount. If an Investor's Eligible Loss Amount is less than \$0.00, then their Eligible Loss Amount will be \$0.00.

D. Additional Provisions

25. *Price.* All prices mentioned in the calculations exclude all fees and commissions. Purchases and sales shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

26. *Artificial Inflation.* Artificial inflation in the prices of the Security has been calculated by the damages expert of the Lead Plaintiffs' in the Class Action, as reflected on Exhibit A.

27. *Holding Periods.* An Investor that purchased or otherwise acquired shares of the Security prior to the opening of trading on the date of the first Corrective Disclosure, January 29, 2010, must have held those shares of the Security through at least the opening of trading on January 29, 2010.

An Investor that purchased or otherwise acquired shares of the Security from the opening of trading on January 29, 2010 through and including October 31, 2010, must have held those shares through at least one of the later Corrective Disclosure dates. By way of example, an Investor that purchased or otherwise acquired shares of the Security at 10:00 a.m. EST on Monday, January 29, 2010 must have held those shares through at least the opening of trading on Friday, April 23, 2010.

28. *FIFO Application:* For each Investor who made multiple purchases and sales of the Security during the Relevant Period, the transactions will be calculated according to the first-in, first-out ("FIFO") method. The earliest sales during the Relevant Period will be matched first against any holdings at the opening of the Relevant Period. Once the beginning holdings have all been matched, or in the event that the Investor had no beginning holdings, then any further sales would be matched against the earliest Relevant Period purchases and chronologically thereafter.

29. *Short Sales:* If the sale date for a share falls before the purchase date ("Short Sale"), then the share has a Recognized Loss Per Share of \$0.00.

30. *Purchases and Sales through Options:* With respect to purchases or sales through the exercise of an option, the purchase/sale date of the Security is the exercise date of the call and the assignment date of the put, and the purchase/sale price is the price of the call at the time

of exercise and the put at the time of assignment. Otherwise, transactions in the Security during the Relevant Period that are pursuant to, or in connection with, a swap, an option or other derivative will not be eligible for a recovery.

31. *Acquisitions:* The receipt or grant to the Investor by gift, devise, inheritance, or operation of law of the Security during the Relevant Period is not considered an eligible purchase if the original purchase or acquisition did not occur during the Relevant Period. Such shares will be excluded from the calculation of the Investor's Eligible Loss Amount.

32. *Market Loss Limitation:* If an Investor's actual losses in the Security are less than the Eligible Loss Amount, then the Eligible Loss Amount shall be limited to the actual loss amount before being aggregated and offset by an Eligible Investor's Prior Recovery. Investors whose total proceeds from sales and holdings of the Security purchased during the Relevant Period exceeded the total purchase amount for such shares, reflecting an actual gain, shall have an Eligible Loss Amount of \$0.00. For the purpose of calculating market losses, the Fund Administrator shall ascribe a "Holding Value" of \$4.21, the closing price of the Security on the day after the final corrective disclosure to each share of Wilmington Trust common stock purchased/acquired during the Relevant Period that was still held as of the close of trading on October 31, 2010.

33. *Pro Rata Distribution:* If the Net Available Distribution Fund has sufficient funds, each Eligible Investor will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Available Distribution Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Investors, then each Eligible Investor will receive a Distribution Payment that their Eligible Loss Amount bears in proportion to the aggregate Eligible Loss Amounts of all Eligible Investors. In no instance will an Eligible Investor receive a Distribution Payment that when combined with his, her, or its Prior Recovery exceeds his, her, or its Eligible Loss Amount.

34. *Minimum Distribution Amount:* If an Eligible Investor's Distribution Payment is less than \$10.00, that Eligible Investor will not receive a Distribution Payment and the funds will be distributed to other Eligible Investors whose Distribution Payments are greater than \$10.00.

V. The Distribution

35. *Procedures for Locating and Notifying Eligible Investors.* Within thirty (30) days following the entry by the Commission of its order approving this Plan, the Fund Administrator shall:

- (a) Establish and maintain a website dedicated to the Distribution Fund. The Distribution Fund's website, located at www.WilmingtonTrustSECDistributionFund.com, will make available a copy of the approved Plan, include a copy of the Plan Notice (described below) and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to investors;

- (b) Establish and maintain a toll-free telephone number for Investors to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Distribution Fund;
- (c) Establish and maintain a traditional mailing address and an email mailing address which will be listed on all correspondence from the Fund Administrator to Investors as well as on the Distribution Fund's website;
- (d) Run a National Change of Address search to retrieve updated U.S. addresses for all records in the database, and review any address updates provided to the Fund Administrator since the Class Action distribution, thereby ensuring updated mailing information;
- (e) Identify Excluded Parties under the Plan;
- (f) Identify Investors under the Plan;
- (g) create a mailing and claim database of all Investors based upon information from the Class Action as of July 9, 2020; and
- (h) in consultation with the Tax Administrator, begin the process of obtaining documents from Investors necessary to tax reporting and any other obligations of the Fair Fund.

36. Within forty-five (45) calendar days of Commission approval of the Plan, the Fund Administrator will send each Investor, to their last known mailing address a notice (the "Plan Notice") regarding the Commission's approval of the Plan, including, as appropriate: a statement characterizing the distribution, a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan, specification of any information needed from the Investor, a description of the tax information reporting and other related tax matters, the procedure for the distribution as set forth in the Plan, and the name and contact information for the Fund Administrator in order to provide any requested information or to contact with questions regarding the distribution. Investors who do not timely provide any requested information to the Fund Administrator may be deemed ineligible for a distribution under the Plan.

The Fund Administrator will have available, and use as appropriate, translation services in connection with all communications with investors, including the Plan Notice, Distribution Fund's website, and toll-free number so that all communications can be as effective as practicable. Translations may be requested by contacting the Fund Administrator by mail, email, or the toll-free number.

The Commission staff retains the right to review and approve any material posted on the Distribution Fund's website and any scripts used in connection with communications with Investors.

37. *Undeliverable Mail.* If a Plan Notice and/or Distribution Payment is/are returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain an Eligible Investor's correct address and/or payment information and will document all such efforts. If another address or other payment information is obtained, the Fund Administrator will then resend the Plan Notice and/or Distribution Payment to the Eligible Investor's new address within sixty (60) days of receipt of the returned mail. Additional efforts by the Fund Administrator to identify new addresses for returned undeliverable mail and/or new payment information will be conducted as necessary and economically reasonable after consultation with the Commission staff. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons whose mailing is returned as undeliverable; all such costs shall be paid by the Distribution Fund. If the Plan Notice and/or Distribution Payment is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find an Eligible Investor's correct address, the Fund Administrator, in its discretion, may remove such Eligible Investor from the distribution and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if practicable, to the remaining Eligible Investors in accordance with the Methodology above.

Any Eligible Investor who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

38. *Distribution Timing.* The Fund Administrator will use its best efforts to start the distribution within one hundred twenty (120) days of the Plan's approval.

39. *Escrow Bank and Reissues.* The Fund Administrator shall establish with the escrow bank ("Bank") an escrow account pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff, in the name of and bearing the Employer Identification Number of the QSF (the "Escrow Account"). The Fund Administrator shall also establish with the Bank a separate deposit account (the "Deposit Account") (e.g. controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name of each account shall be in the following form: Wilmington Trust SEC Distribution Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in Wilmington Trust Corporation, Administrative Proceeding File No. 3-16098.

During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors, tax obligations, and/or fees of the Tax Administrator and/or Fund Administrator, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed

FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

The Fund Administrator shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and the Deposit Accounts.

40. All Distribution Fund checks presented for payment or electronic transfer will be subject to “positive pay” controls before being honored by the Bank, and all checks issued to Eligible Investors by the Fund Administrator shall bear a stale date of one hundred twenty (120) days. Checks that are not negotiated within this one hundred twenty (120) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor’s claim is extinguished as of the stale date and the funds will remain in the Distribution Fund. If a check reissue has been requested before the stale date, such request will be honored and the check reissue will bear a stale date of sixty (60) days. Checks that are not negotiated within this sixty (60) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor’s claim is extinguished as of the stale date and the funds will remain in the Distribution Fund. A check reissue request should be made within one hundred twenty (120) days from the original check issuance date.

Electronic or wire transfers may be utilized at the discretion of the Fund Administrator to transfer approved Distribution Payments on behalf of twenty (20) or more Eligible Investors. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Bank by the Fund Administrator.

41. *Payment to Eligible Investors.* The Fund Administrator will compile the payee information, including the names, addresses, and Distribution Payments of all Eligible Investors (“Payee List”) and prepare a payment file in a Commission-approved format along with a reasonable assurances letter for submission to Commission staff. Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), Commission staff will seek to obtain an order from the Commission to disburse the Net Available Distribution Fund.

All disbursements will be made pursuant to a Commission order. Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the Escrow Account. The Fund Administrator shall then use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within fifteen (15) business days of the

release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

Distribution checks and electronic payments will be preceded or accompanied by a communication that will clearly indicate (a) that the money is being distributed from a Distribution Fund established to compensate investors for harm suffered as a result of securities law violations; (b) that the tax treatment of the distribution is the responsibility of each Eligible Investor and that the Eligible Investor should consult its tax advisor for advice regarding the tax treatment of the distribution; (c) the contact information for the Fund Administrator for questions regarding the distribution payment; and (d) that checks will be void after one hundred twenty (120) days and cannot be reissued after one hundred twenty (120) days from the date of the original check.

The Fund Administrator will work with the Bank and maintain information about uncashed checks, returned payments, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible and for maintaining a record of such efforts. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Distribution Fund.

42. *Additional Distributions.* The Fund Administrator may make one or more distributions to Eligible Investors pursuant to the Plan. With respect to distributions after the initial distribution, and unless otherwise determined by the Fund Administrator in consultation with the Commission staff, each distribution will be limited to those Eligible Investors whose Distribution Payment meets the *de minimis* amount and who negotiated the distribution checks issued in the immediately preceding distribution, or received electronic payments.

43. *Outreach Efforts.* Subject to paragraph 37, above, regarding *Undeliverable Mail*, the Fund Administrator will make reasonable efforts to contact Eligible Investors to follow-up on the status of uncashed distribution checks or returned electronic payments and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks or payments, subject to the time limits detailed herein.

44. *Accountings.* Pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), the Fund Administrator will file an accounting with the Commission during the first ten (10) days of each calendar quarter on a standardized form provided by the Commission staff. The accounting shall detail all monies earned or received and all monies spent in connection with the administration of the Plan. Once all payments are disbursed to Eligible Investors pursuant to the procedures described above, and all taxes, fees, and expenses have been paid, the Fund Administrator will submit a final accounting for approval by the Commission, on a standardized form provided by the Commission staff, prior to the discharge of the Fund Administrator and cancellation of the Fund Administrator's bond.

45. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to distribute the Net Available Distribution Fund in

accordance with the general purposes of this Plan. The Fund Administrator will inform Commission staff of any changes needed to the Plan. If upon consultation with Commission staff, a change is determined to be material, Commission approval is required prior to implementation by amending the Plan. Immaterial changes may be made by the Fund Administrator with approval of the Commission staff. For good cause shown, and in consultation with the Commission staff, the Fund Administrator may extend any of the procedural deadlines set forth in this Plan.

46. *Procedures to Request Plan Notice.* Any person may request a Plan Notice from the Fund Administrator within forty-five (45) days of the approval of the Plan.

47. *Residual and Disposition of Undistributed Funds.* A residual within the Distribution Fund refers to any amounts remaining after distribution of the Net Available Distribution Fund to Eligible Investors has occurred. The residual may include, but is not limited to, funds reserved for future taxes and related expenses, annual bond fee premiums, administrative expenses, distributions from checks that have not been cashed or payments not received, from checks that were not delivered or from funds returned to the Commission, and tax refunds for overpayment or for waiver of IRS penalties. All residual funds remaining after all expenses of administration and taxes have been satisfied will be transferred to the Commission for transmittal to the U.S. Treasury after the final accounting is approved by the Commission.

48. *Miscellaneous.* The Fund Administrator is authorized to enter into agreements with financial institutions, (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Fund Administrator under this Plan.

The Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the Secretary by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff.

49. *Document Retention.* The Fund Administrator will retain all documents in paper and electronic form for a period of six (6) years after approval of the final accounting and thereafter will transfer the documents received in connection with the Distribution Fund administration to the Commission pursuant to Commission staff direction. In addition, the Fund Administrator will shut down the Distribution Fund’s website established specifically for the administration of the Distribution Fund six (6) months after the closing of the Escrow and Deposit Accounts, or at such earlier time as the Fund Administrator determines with concurrence of the Commission staff.

50. *Termination of the Distribution Fund.* The Distribution Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred: (a) a final accounting, in a standard accounting format provided by Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; (b) all taxes, fees and expenses have been paid by the Distribution Fund; and (c) any amount

remaining in the Distribution Fund has been received by the Commission. When the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the termination of the Distribution Fund, the discharge of the Fund Administrator, the cancellation of the bond, and the transfer of any amount remaining in the Distribution Fund, and any amount returned to it in the future, to the U.S. Treasury.

51. *Notice of Proposed Plan and Opportunity for Comment.* The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the “Notice”) shall be published on the Commission’s website <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the Notice (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (b) by using the Commission’s Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission’s website should include “Administrative Proceeding File No. 3-16098” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Attachments:

Exhibit A: Table A-1 from the Class Action Notice

Exhibit B: Table B from the Class Action Notice

Exhibit A

(Table A-1 from the Class Action Notice)

TABLE A-1

Estimated Artificial Inflation With Respect to Purchases/Acquisitions of Wilmington Trust Common Stock from January 18, 2008 through and including October 31, 2010

Date Range	Artificial Inflation Per Share
January 18, 2008 - January 28, 2010	\$8.83
January 29, 2010 - April 22, 2010	\$6.97
April 23, 2010 - June 3, 2010	\$5.74
June 4, 2010 - June 22, 2010	\$5.29
June 23, 2010	\$3.88
June 24, 2010 - July 22, 2010	\$3.88
July 23, 2010 - October 31, 2010	\$2.67

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Exhibit B

(Table B to the Class Action Notice)

TABLE B

**90-Day Look-back Table for Wilmington Trust Common Stock
(Closing Price and Average Closing Price November 1, 2010 through January 28, 2011)**

Date	Closing Price	Average Closing Price Between November 1, 2010 and Date Shown	Date	Closing Price	Average Closing Price Between November 1, 2010 and Date Shown
11/1/2010	\$4.21	\$4.21	12/15/2010	\$4.07	\$4.16
11/2/2010	\$4.11	\$4.16	12/16/2010	\$4.12	\$4.16
11/3/2010	\$4.19	\$4.17	12/17/2010	\$4.08	\$4.15
11/4/2010	\$4.28	\$4.20	12/20/2010	\$4.28	\$4.16
11/5/2010	\$4.31	\$4.22	12/21/2010	\$4.29	\$4.16
11/8/2010	\$4.23	\$4.22	12/22/2010	\$4.36	\$4.17
11/9/2010	\$4.11	\$4.21	12/23/2010	\$4.28	\$4.17
11/10/2010	\$4.20	\$4.21	12/27/2010	\$4.31	\$4.17
11/11/2010	\$4.39	\$4.23	12/28/2010	\$4.32	\$4.18
11/12/2010	\$4.33	\$4.24	12/29/2010	\$4.41	\$4.18
11/15/2010	\$4.36	\$4.25	12/30/2010	\$4.39	\$4.19
11/16/2010	\$4.29	\$4.25	12/31/2010	\$4.34	\$4.19
11/17/2010	\$4.28	\$4.25	1/3/2011	\$4.48	\$4.20
11/18/2010	\$4.23	\$4.25	1/4/2011	\$4.38	\$4.20
11/19/2010	\$4.23	\$4.25	1/5/2011	\$4.42	\$4.21
11/22/2010	\$4.04	\$4.24	1/6/2011	\$4.46	\$4.21
11/23/2010	\$4.03	\$4.22	1/7/2011	\$4.38	\$4.22
11/24/2010	\$4.06	\$4.22	1/10/2011	\$4.29	\$4.22
11/26/2010	\$4.04	\$4.21	1/11/2011	\$4.36	\$4.22
11/29/2010	\$3.98	\$4.20	1/12/2011	\$4.41	\$4.22
11/30/2010	\$3.92	\$4.18	1/13/2011	\$4.33	\$4.23
12/1/2010	\$3.95	\$4.17	1/14/2011	\$4.40	\$4.23
12/2/2010	\$4.07	\$4.17	1/18/2011	\$4.35	\$4.23
12/3/2010	\$4.08	\$4.16	1/19/2011	\$4.33	\$4.23
12/6/2010	\$4.00	\$4.16	1/20/2011	\$4.29	\$4.23
12/7/2010	\$4.01	\$4.15	1/21/2011	\$4.36	\$4.24
12/8/2010	\$4.15	\$4.15	1/24/2011	\$4.36	\$4.24
12/9/2010	\$4.18	\$4.15	1/25/2011	\$4.37	\$4.24
12/10/2010	\$4.29	\$4.16	1/26/2011	\$4.35	\$4.24
12/13/2010	\$4.25	\$4.16	1/27/2011	\$4.39	\$4.25
12/14/2010	\$4.19	\$4.16	1/28/2011	\$4.37	\$4.25

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